

Eugene P. Ramirez (State Bar No. 134865)
eugene.ramirez@manningkass.com
Lynn Carpenter (State Bar No. 310011)
lynn.carpenter@manningkass.com
Kayleigh Andersen (State Bar No. 306442)
kayleigh.andersen@manningkass.com
**MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP**
801 S. Figueroa St, 15th Floor
Los Angeles, California 90017-3012
Telephone: (213) 624-6900
Facsimile: (213) 624-6999

Attorneys for Defendants, COUNTY OF
SAN BERNARDINO; CORY
MCCARTHY, ANDREW POLLICK;
DAVID MOORE, and CRISTINA
OLIVAS

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

A.J.P. and A.M.P., minors by and
through their guardian ad litem Cynthia
Nunez, individually and as successor in
interest to Albert Perez, deceased; and
PATRICIA RUIZ, individually,

Plaintiffs,

v.

COUNTY OF SAN BERNARDINO;
and DOES 1-10, Inclusive,

Defendant.

Case No. 5:22-CV-01291 SSS (SHKx)

*[Honorable Sunshine Suzanne Sykes,
Magistrate Judge, Shashi H.
Kewalramani]*

**DEFENDANTS' RESPONSE TO
PLAINTIFFS' SEPARATE
STATEMENT OF GENUINE
DISPUTES OF MATERIAL FACT
AND ADDITIONAL MATERIAL
FACTS**

*Filed concurrently with Reply in
Support of Defendants' Motion For
Summary Judgment; Evidentiary
Objections to Plaintiffs' Evidence; and
Defendants' Response to Plaintiffs'
Evidentiary Objections*

Date: April 19, 2024
Time: 2:00 p.m.
Crtrm.: Courtroom 2, 2nd Floor

Action Filed: 07/22/2022

MK MANNING | KASS

**TO THIS HONORABLE COURT AND THE PARTIES AND THEIR
RESPECTIVE COUNSEL OF RECORD:**

In accordance with C.D L.R. 56-3 and this Court’s Standing Order, defendants COUNTY OF SAN BERNARDINO (“County”); CORY MCCARTHY (“Corporal McCarthy”), ANDREW POLLICK (“Corporal Pollick”); DAVID MOORE (“Deputy Moore”), and CRISTINA OLIVAS (“Corporal Olivas”) (“Defendnat Deputies” and collectively “Defendants”) submit this Response to Plaintiffs’ Separate Statement of Genuine Disputes of Material Fact and Additional Material Facts [Doc. 46].

DEFENDANTS’ FACTS AND SUPPORTING EVIDENCE [DUF]:	PLAINTIFFS’ RESPONSES AND SUPPORTING EVIDENCE:
1. On Sunday, August 29, 2021, at approximately 1726 hours, San Bernardino County Sheriffs’ Dispatch received a 911 call for service at 16576 Zenda Street #1, Victorville. Call Log History (Ex. “A”) at pg. 1.	Undisputed.
2. The reporting party, Helen Fregoso, reported her daughter’s friend, Albert Perez (“Perez”), was in the garage, causing a disturbance, and that he had a gun in his front right pocket. Call Log History (Ex. “A”) at pg. 1; Fregoso Depo. (Ex. “B”) at 32:5-17, 22-25, 33:1-3.	Undisputed.
3. Helen Fregoso’s daughter, Renee Caudillo, advised Sheriffs Dispatch that Perez told her that she was causing him problems and thought people were after him, and that he pulled out a black gun from his pocket. Call Log History (Ex. “A”) at pg. 1.	Undisputed.

1 2 3 4 5	4. Deputy Steven Carter was the first to arrive at the incident location, and located Perez in the garage and observed a black gun in Perez' hand. Call Log History (Ex. "A") at pg. 2.	Undisputed.
6 7 8 9	5. Deputy Steven Carter ordered Perez to drop the gun, but Perez did not comply. Call Log History (Ex. "A") at pg. 2.	Undisputed.
10 11 12 13	6. Perez remained in the garage with the gun in his hand and refusing commands from deputies to drop the gun. Call Log History (Ex. "A") at pgs. 2, 3, 4	Undisputed.
14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	7. At approximately 1900 hours, Sergeant Luke Gaytan ("Sergeant Gaytan") requested via text message that all members of the San Bernardino County Sheriff's Department Specialized Enforcement Division Team 1 ("SED Team") respond to Zenda Street in Victorville for a barricade situation where the subject had threatened a female with a firearm, and the subject was still armed and barricaded in the garage of a multi-unit complex where he did not live. Gaytan Decl., ¶ 2; McCarthy Decl., ¶ 2; Olivas Decl., ¶ 2; Pollick Decl., ¶ 2; Moore Decl., ¶ 2; Stone Decl., ¶ 2; McCarthy Depo. (Ex. "D") at 9:4-10. 24:1-6.	Objection: Compound. Disputed on the grounds that the deputies had no specific information that the subject had threatened a female with a firearm. Perez never verbally threatened to injure anyone. Ex. 2 to Leap Decl. ("Pollick Depo.") at 61:13-24; Deposition of Anthony Alcala ("Alcala Depo.") attached as "Exhibit 7" to Leap Decl., at 20:22-25, Deposition of Helen Fregoso ("Fregoso Depo.") attached as "Exhibit 8" to Leap Decl. at 46:19-50:5.

7. Moving Party's Response:

Contrary to Plaintiffs' assertion, Corporal Pollick testified that he did himself did not hear Perez threaten anyone, but that information was relayed to him when the initial call for service was entered. Ex. 2 to Leap Decl. ("Pollick Depo.") at 61:13-24. Further, Negotiator Alcala testified that he did not have any information that anyone had been physically injured, not that Perez did not threaten anyone. Ex. 7 to Leap Depo. ("Alcala Depo.") at 20:22-25. Lastly, Helen Fregoso stated that she did not hear Perez threaten to harm anyone and that he did not threaten to harm her. Ex. 8 to Leap Depo. ("Fregoso Depo.") at 46:19-50:5.

Accordingly, Plaintiffs do not present any evidence to dispute that the SED Team was told that the subject had threatened a female with a firearm. Plaintiffs' dispute is not to the fact presented, and the evidence submitted does not create a dispute of fact. Thus, this fact is undisputed for the purpose of this Motion.

8. Sergeant Gaytan also notified the SED Team that a crisis negotiator, Negotiator Anthony Alcala, was also responding to the incident location.

Undisputed.

Gaytan Decl., ¶ 3; McCarthy Decl., ¶ 3; Olivas Decl., ¶ 3; Pollick Decl., ¶ 3; Moore Decl., ¶ 3; Stone Decl., ¶ 3.

9. Sergeant Gaytan had all members of the SED Team, which included Sergeant Gaytan, Corporal Andrew Pollick, Deputy Josh Stone, Deputy David Moore, Corporal Cristina Olivas, Corporal Cory McCarthy, and Corporal Greg Gary, meet at the Victorville Library just west of the incident location for a briefing prior to arriving at the subject location.

Undisputed.

Gaytan Decl., ¶ 4; McCarthy Decl., ¶ 4; Olivas Decl., ¶ 4; Pollick Decl., ¶

1	4; Moore Decl., ¶ 4; Stone Decl., ¶ 4;	
2	Pollick Depo. (Ex. “C”) at 5:25-6:4;	
3	McCarthy Depo. (Ex. “D”) at 22:6-13.	
4	10. During this briefing, the SED Team	Undisputed.
5	learned that patrol deputies from the	
6	Victorville Sheriff’s Station were	
7	negotiating with the suspect, Perez,	
8	who was seated on a stool at the rear	
9	of the garage behind a pool table and	
10	was in possession of a gun.	
11	Gaytan Decl., ¶ 5; McCarthy Decl., ¶	
12	5; Olivas Decl., ¶ 5; Pollick Decl.,	
13	¶ 5; Moore Decl., ¶ 5; Stone Decl., ¶	
14	5; McCarthy Depo. (Ex. “D”) at	
15	23:5-13; Perez Photos (Ex. “K”).	
16	11. The SED Team also learned that the	Objection: Vague as to time.
17	door from the garage to the home had	
18	been locked by the homeowner, and	Disputed on the grounds that Mr. Perez
19	that both sides of the garage were	eventually put the gun down in
20	contained by patrol units and they	response to commands.
21	were trying to de-escalate the	
22	situation by attempting to convince	
23	him to surrender peacefully, but he	
24	refused to put the gun down.	
25	Gaytan Decl., ¶ 6; McCarthy Decl., ¶	
26	6; Olivas Decl., ¶ 6; Pollick Decl., ¶	
27	6; Moore Decl., ¶ 6; Stone Decl., ¶ 6.	
28	11. Moving Party’s Response:	
	Plaintiffs’ dispute is not to the fact presented, and Plaintiffs have not presented any evidence that prior to the SED Team’s arrival Perez refused to put the gun down, thus there is not dispute of fact. Thus, this fact is undisputed for the purpose of this Motion.	

12. During this briefing, the SED Team also developed an operational plan, which included medical plans, gas plans, and less lethal plans, before going to the incident location.	Undisputed.
Gaytan Decl., ¶ 7; McCarthy Decl., ¶ 7; Olivas Decl., ¶ 7; Pollick Decl., ¶ 7; Moore Decl., ¶ 7; Stone Decl., ¶ 7; Pollick Depo. (Ex. "C") at Pollick Depo. (Ex. "C") at 5:25-6:4, 22-24.	
13. The SED Team's medical plan included requesting Victorville Fire Department, American Medical Response, and air rescue, the sheriff's helicopter, to be on standby in the event that there was a medical emergency, the BearCat and Corporal Olivas' vehicle were also set up as medical extract vehicles.	Undisputed.
Gaytan Decl., ¶ 8; McCarthy Decl., ¶ 8; Olivas Decl., ¶ 8; Pollick Decl., ¶ 8; Moore Decl., ¶ 8; Stone Decl., ¶ 8; McCarthy Depo. (Ex. "D") at 26:14-24.	
14. The SED Team's gas plans included Corporal Pollick and Deputy Moore having chemical agents should the need and opportunity to use them arise, and Corporal Pollick developed a chemical agent plan for the house. The SED Team developed numerous less lethal plans to be used at the appropriate point if the opportunity presented itself.	Undisputed.

1	Gaytan Decl., ¶ 9; McCarthy Decl., ¶	
2	9; Olivas Decl., ¶ 9; Pollick Decl., ¶	
3	9; Moore Decl., ¶ 9; Stone Decl., ¶ 9;	
4	Pollick Depo. (Ex. “C”) at 7:8-12.	
5	15.The SED Team’s operational plan	Undisputed.
6	included containing both sides of the	
7	garage, with Corporal McCarthy,	
8	Corporal Olivas and Deputy Stone to	
9	be positioned on the southeast corner	
10	of the garage, with Corporal Olivas	
11	with a shield and her pistol, Corporal	
12	McCarthy behind Corporal Olivas	
13	with lethal cover, and Deputy Stone	
14	with a less lethal 40 mm multi-	
15	launcher. On the other side, Deputy	
16	Moore, Corporal Pollick, and	
17	Sergeant Gaytan were to be	
18	positioned on the southwest corner of	
19	the garage, with Deputy Moore with	
20	a shield and his pistol, Corporal	
21	Pollick behind Deputy Moore with	
22	lethal cover, and Sergeant Gaytan	
23	with a less lethal 40 mm single-	
24	launcher.	
25	Gaytan Decl., ¶ 10; McCarthy Decl.,	
26	¶ 10; Olivas Decl., ¶ 10; Pollick	
27	Decl., ¶ 10; Moore Decl., ¶ 10; Stone	
28	Decl., ¶ 10.	
29	16.Additionally, the SED Team was	Undisputed.
30	going to position the BearCat, which	
31	is an armored rescue vehicle, in the	
32	driveway and face it towards the	
33	garage to light up the garage because	
34	it was dark outside.	
35	Gaytan Decl., ¶ 11; McCarthy Decl.,	

1	¶ 11; Olivas Decl., ¶ 11; Pollick	
2	Decl., ¶ 11; Moore Decl., ¶ 11; Stone	
3	Decl., ¶ 11; McCarthy Depo. (Ex.	
4	“D”) at 26:3-7; Moore Depo. (Ex.	
	“E”) at 19:10-18.	
5	17.Sergeant Gaytan made it clear to the	Disputed on the grounds that it was
6	SED Team that if the suspect was to	unreasonable for the deputies to
7	separate himself from the firearm, the	believe that Mr. Perez would fire any
8	team could not allow him to gain	shots with the gun if he were to
9	access back to that firearm because	retrieve the gun after putting it on the
10	we did not want him to be able to	ground in compliance with the
11	shoot at us or any members of the	deputies’ commands.
12	public.	
13	Gaytan Decl., ¶ 12; McCarthy Decl.,	Mr. Perez never pointed the firearm
14	¶ 12; Olivas Decl., ¶ 12; Pollick	at anyone, including the reporting
15	Decl., ¶ 12; Moore Decl., ¶ 12; Stone	party. Ex. 1 to Leap Decl. (“Moore
16	Decl., ¶ 12; Pollick Depo. (Ex. “C”)	Depo.”) at 22:11-14; Ex. 2 to Leap
17	at 6:25-7:7; McCarthy Depo. (Ex.	Decl. (“Pollick Depo.”) at 15:18-23;
18	“D”) at 45:19-46:2, 76:2-8; Moore	Ex. 4 to Leap Decl. (“McCarthy
19	Depo. (Ex. “E”) at 29:15-30:1;	Depo.”) at 66:1967:7; Deposition of
20	Olivas Depo. (Ex. “F”) at 20:18-21:2;	Joshua Stone (“Stone Depo.”)
21	Stone Depo. (Ex. “G”) at 28:19-29:8.	attached to Leap Decl. as Exhibit 5,
22		at 47:10-15; Ex. 6 to Leap Decl.
23		(“Gaytan Depo.”) at 9:15-25, 10:14-
24		22’ Ex. 1 to Leap Decl. (“Moore
25		Depo.”) at 66:20-24); Ex. 7 to Leap
26		Decl. (“Alcala Depo.”) at 27:4-13;
27		32:7-23; Ex. 8 to Leap Decl.
28		(“Fregoso Depo.”) at 46:19-50:5.
		Mr. Perez never fired any shots
		from the gun.
		Ex. 2 to Leap Decl. (“Pollick Depo.”)
		at 15:18-16:6; 32:19-20; Ex. 4 to
		Leap Decl. (“McCarthy Depo.”) at
		66:1917:7; Ex. 5 to Leap Decl.
		(“Stone Depo.”) at 56:5-14.

	<p>When Mr. Perez was holding the gun when he sat on the stool, he never raised the gun.</p> <p>Ex. 1 to Leap Decl. (“Moore Depo.”) at 22:11-14, 66:20-24; Ex. 2 to Leap Decl. (“Pollick Depo.”) at 15:18-23; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 66:19-67:7; Ex. 5 to Leap Decl. (“Stone Depo.”) at 24:7-16, 47:10-15; Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 9:15-25, 10:14-22; Ex. 7 to Leap Decl. (“Alcala Depo.”) at 27:413; 32:7-23.</p>
<p>17. Moving Party’s Response:</p> <p>Plaintiffs’ dispute to this fact is not material to Plaintiffs’ claims and has no bearing on Defendants’ liability in this action. Plaintiffs’ do not present any evidence to dispute that the SED Team was told by Sergeant Gaytan <i>prior to their arrival</i> that if the suspect was to separate himself from the firearm, the team could not allow him to gain access back to that firearm because we did not want him to be able to shoot at us or any members of the public. Therefore, Plaintiffs’ dispute is not to the fact presented, and the evidence submitted does not create a dispute of fact. Thus, this fact is undisputed for the purpose of this Motion.</p>	
<p>18. Additionally, during the briefing, the SED Team learned that there was a family who stayed in their home in the northwest corner of the multi-unit complex.</p> <p>Gaytan Decl., ¶ 13; McCarthy Decl., ¶ 13; Olivas Decl., ¶ 13; Moore Decl., ¶ 13; Stone Decl., ¶ 13.</p>	<p>Objection: relevance.</p> <p>The deputies had the garage contained. (Def. SUF 15).</p> <p>Otherwise, undisputed.</p>
<p>18. Moving Party’s Response:</p> <p>Contrary to Plaintiffs’ assertion, it is <i>relevant</i> that there was a family who stayed</p>	

in their home in the northwest corner of the multi-unit complex, as Perez not only posed an immediate threat to Defendant Deputies, other deputies on the scene, but the public as well. (*See* Doc. 43 at 17:20-20:2.) Further, Plaintiffs' dispute is not to the fact presented, and the evidence submitted does not create a dispute of fact. Thus, this fact is undisputed for the purpose of this Motion.

19. The SED Team made contact with the family, and the family decided to stay in the home as there was an elderly female at the home who was not easily mobile, and the SED Team advised the family to shelter in place.

Gaytan Decl., ¶ 13; McCarthy Decl., ¶ 13; Olivas Decl., ¶ 13; Pollick Decl., ¶ 13; Moore Decl., ¶ 13; Stone Decl., ¶ 13.

Objection: relevance.

The deputies had the garage contained. (Def. SUF 15).

Otherwise, undisputed.

19. Moving Party's Response:

Contrary to Plaintiffs' assertion, it is relevant that there was a family who stayed in their home in the northwest corner of the multi-unit complex, as Perez not only posed an immediate threat to Defendant Deputies, other deputies on the scene, but the public as well. (*See* Doc. 43 at 17:20-20:2.) Further, Plaintiffs' dispute is not to the fact presented, and the evidence submitted does not create a dispute of fact. Thus, this fact is undisputed for the purpose of this Motion.

20. The SED Team arrived to the incident location with the BearCat and met with the patrol sergeant to gain additional information.

Gaytan Decl., ¶ 14; McCarthy Decl., ¶ 15; Olivas Decl., ¶ 15; Pollick Decl., ¶ 15; Moore Decl., ¶ 15; Stone Decl., ¶ 14.

Undisputed.

21. The SED Team learned that Perez was kind of nodding off, he was kind

Disputed on the grounds that at the time of the shooting, the Deputies had

1	of lucid, and that it was unclear if he	no information that Mr. Perez was
2	was under the influence of any	under the influence of any illegal
3	narcotics or alcohol.	substances.
4	Gaytan Decl., ¶ 14; McCarthy Decl.,	Deposition of Cory McCarthy
5	¶ 15; Olivas Decl., ¶ 15; Pollick	("McCarthy Depo.") attached to Leap
6	Decl., ¶ 15; Moore Decl., ¶ 15; Stone	Decl. as "Exhibit 4," at 25:13-18; Ex. 1
7	Decl., ¶ 14.	to Leap Decl. ("Moore Depo.") at 13:8-
8		14; Ex. 7 to Leap Decl. ("Alcala
9		Depo.") at 20:16-21.
10	21. Moving Party's Response:	
11	Plaintiffs' dispute to this fact is not material to Plaintiffs' claims and has no	
12	bearing on Defendants' liability in this action. Plaintiffs' do not present any	
13	evidence to dispute that it was unclear if he was under the influence of any	
14	narcotics or alcohol. Further, Plaintiffs' dispute is not to the fact presented, and	
15	the evidence submitted does not create a dispute of fact. Thus, this fact is	
16	undisputed for the purpose of this Motion.	
17	22. Due to the patrol deputies being	Undisputed.
18	fatigued after hours of attempted	
19	negotiations and attempts to gain	
20	compliance from Perez, the SED	
21	Team took over and took their	
22	assigned positions on the corners of	
23	the garage as was discussed in	
24	briefing.	
25	Gaytan Decl., ¶ 15; McCarthy Decl.,	
26	¶ 16; Olivas Decl., ¶ 16; Pollick	
27	Decl., ¶ 16; Moore Decl., ¶ 16; Stone	
28	Decl., ¶ 15.	
29	23. Perez remained seated directly	Undisputed.
30	behind the pool table, approximately	
31	16 feet away from the garage	
32	opening, with the gun in his right	
33	hand, and looking back and forth	

1	between the members of the SED	
2	team on each side of the garage.	
3	McCarthy Depo. (Ex. “D”) at 26:25-	
4	27:3, 28:3-7, 30:6-14; Moore Depo.	
5	(Ex. “E”) at 10:21-23, 22:11-14, 18-	
6	19, 23-24; Olivas Depo. (Ex. “F”) at	
7	10:20-11:6; Alcala Depo. (Ex. “H”) at	
8	25:6-19; Gaytan Depo. (Ex. “I”) at	
9	11:22-25; Perez Photos (Ex. “K”);	
10	Garage Photos (Ex. “L”).	
11	24. Before the lethal force encounter,	Undisputed.
12	Corporal McCarthy changed	
13	positions from the side of the garage	
14	to the BearCat in the driveway so that	
15	he could have a different vantage	
16	point to see Perez in the garage.	
17	McCarthy Decl., ¶ 16.	
18	25. During the incident, Negotiator	Undisputed.
19	Alcala was the assigned crisis	
20	negotiator and attempted numerous	
21	times to negotiate with Perez and	
22	gain his compliance.	
23	Gaytan Decl., ¶ 16; McCarthy Decl.,	
24	¶ 17; Olivas Decl., ¶ 17; Pollick	
25	Decl., ¶ 17; Moore Decl., ¶ 17; Stone	
26	Decl., ¶ 16; McCarthy Depo. (Ex.	
27	“D”) at 27:9-22, 28:8-14; Gaytan	
28	Depo. (Ex. “I”) at 17:12-15; Incident	
	Audio (Ex. “J”).	
	26. During the negotiation, Negotiator	Undisputed.
	Alcala was able to convince Perez to	
	put the gun down. Perez put the gun	
	by the stool behind the pool table,	
	and the deputies viewed this as an act	

1	of compliance.	
2		
3	Pollick Depo. (Ex. “C”) at 12:9-14,	
4	18:19-19:1; McCarthy Depo. (Ex.	
5	“D”) at 39:3-13, 67:8-12; Moore	
6	Depo. (Ex. “E”) at 11:3-15, 12:23-25;	
7	Olivas Depo. (Ex. “F”) at 13:7-14;	
8	Stone Depo. (Ex. “G”) at 20:22-	
9	21:14, 30:22-24, 48:10-15; Alcala	
10	Depo. (Ex. “H”) at 32:24-33:9,	
11	34:13-35:11; Incident Audio (Ex.	
12	“J”) at 25:00-27:00.	
13		
14	27. Then, Negotiator Alcala encouraged	Undisputed.
15	Perez to stand up and walk towards	
16	the deputies, Perez complied and	
17	walked toward the front of the	
18	garage.	
19		
20	Pollick Depo. (Ex. “C”) at 13:2-6,	
21	19:17-21; McCarthy Depo. (Ex. “D”) at 41:13-14, 67:13-16; Olivas Depo. (Ex. “F”) at 13:15-20, 14:5-13; Moore Depo. 10:11-13, 11:24-12:10; Stone Depo. (Ex. “G”) at 21:18-21, 25, 22:1-5, 48:10-23; Alcala Depo. (Ex. “H”) at 35:12-20, 41:6-15; Incident Audio (Ex. “J”) at 27:00-28:00.	
22		
23	28. As Perez started to move towards the	Undisputed.
24	front of the garage, where the SED	
25	Team was waiting, Sergeant Gaytan	
26	instructed Perez to stop so that the	
27	SED Team could safely take Perez	
28	into custody.	
	Gaytan Decl., ¶ 16; McCarthy Decl., ¶ 17; Olivas Decl., ¶ 17; Pollick	

1	Decl., ¶ 17; Moore Decl., ¶ 17; Stone	
2	Decl., ¶ 16; Stone Depo. (Ex. “G”) at	
3	22:6-8, 18-21, 26:19-21, 48:16-18;	
4	Alcala Depo. (Ex. “H”) at 41:11-17,	
5	47:20-24; Gaytan Depo. (Ex. “I”) at	
6	20:20-24; Incident Audio (Ex. “J”) at	
7	28:00-31:50.	
8	29.Sergeant Gaytan communicated to	Objection: Calls for speculation as to
9	Perez that the deputies were going to	Mr. Perez’s state of mind.
10	have to take him into custody, which	
11	appeared to the deputies to frustrate	Disputed that Mr. Perez was not
12	Perez, and lead the deputies to	cooperating.
13	believe that Perez was no longer	
14	cooperating.	Sergeant Gaytan instructed Mr. Perez
15		to stop when Mr. Perez reached the
16	Moore Depo. (Ex. “E”) at 21:22-	southwest corner of the pool table, and
17	22:1, 41:10-16; Olivas Depo. (Ex.	Mr. Perez complied by stopping at the
18	“F”) at 19:24-20:7, 49:3-25; Stone	corner of the pool table.
19	Depo. (Ex. “G”) at 48:16-18; Gaytan	Ex. 6 to Leap Decl. (“Gaytan Depo.”)
20	Depo. (Ex. “I”) at 40:5-13, 23-25,	at 20:20-21:7; Ex. 4 to Leap Decl.
21	41:1-19; Incident Audio (Ex. “J”) at	(“McCarthy Depo.”) at 41:13-42:2; Ex.
22	28:00-31:50.	6 to Leap Decl. (“Gaytan Depo.”) at
23		20:20-21:7; Ex. 7 to Leap Decl.
24		(“Alcala Depo.”) at 47:11-15.
25		
26		When Mr. Perez stopped at the end of
27		the pool table, the deputies could see
28		that his hands were visibly empty. Ex.
		2 to Leap Decl. (“McCarthy Depo.”) at
		41:13-25. Ex. 5 to Leap Decl. (“Stone
		Depo.”) at 26:10-18; Ex. 6 to Leap
		Decl. (“Gaytan Depo.”) at 29:10-15.
		Sergeant Gaytan then instructed Mr.
		Perez to turn around and get on his
		knees.
		Belt Recording of Sergeant Luke

1		Gaytan (“Incident Audio”) attached to Declaration of Kayleigh Anderson (“Anderson Decl.”) as Exhibit J at 30:29-30:59; Ex. 7 to Leap Decl. (“Alcala Depo.”) at 52:9-14.
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4		
5		After Sergeant Gaytan instructed Mr.
6		Perez to turn around and get on his
7		knees, Mr. Perez took an
8		approximately half-foot step back with
9		his left foot and began to turn to his
10		left.
11		Ex. 1 to Leap Decl. (“Moore Depo.”) at
12		41:4-9, 55:1-3; Ex. 2 to Leap Decl. (“Pollick Depo.”) at 20:19-24.
13	29. Moving Party’s Response:	
14	Contrary to Plaintiffs’ assertion, based on Perez’ visible frustration regarding	
15	being taken into custody, <i>the deputies believed</i> that Perez was no longer	
16	cooperating. Moore Depo. (Ex. “E”) at 21:22-22:1, 41:10-16; Olivas Depo. (Ex.	
17	“F”) at 19:24-20:7, 49:3-25; Stone Depo. (Ex. “G”) at 48:16-18; Gaytan Depo.	
18	(Ex. “T”) at 40:5-13, 23-25, 41:1-19. Further, Plaintiffs’ dispute to this fact is not	
19	material to Plaintiffs’ claims and has no bearing on Defendants’ liability in this	
20	action. Lastly, Plaintiffs’ dispute is not to the fact presented, and the evidence	
21	submitted does not create a dispute of fact. Thus, this fact is undisputed for the	
22	purpose of this Motion.	
23	30. For a few minutes, while Sergeant	Objection: Calls for speculation as
24	Gaytan continued to talk to Perez to	to Mr. Perez’s state of mind.
25	have him peacefully surrender, Perez	
26	stood parallel to the middle of the	Disputed that Mr. Perez was not
27	pool table, approximately eight feet	cooperating.
28	north of the garage opening and	
	approximately eight feet away from	Sergeant Gaytan instructed Mr.
	the gun’s location, Perez then put his	Perez to stop when Mr. Perez
	hands up and shook his head back	reached the southwest corner of the
	and forth, with an irritated and	pool table, and Mr. Perez complied

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<p>frustrated look, without making eye contact with anyone.</p> <p>Pollick Depo. (Ex. “C”) at 13:7-19; McCarthy Depo. (Ex. “D”) at 47:1-12, 53:3-7; Moore Depo. (Ex. “E”) at 14:18-21, 21:22-22:1, 39:24-25, 40:1, 8-9, 24-25, 41:1-3, 10-16; Stone Depo. (Ex. “G”) at 31:8-10; Gaytan Depo. (Ex. “I”) at 31:5-14, 40:23-41:19; Incident Audio (Ex. “J”) at 28:00-31:50; Garage Photos (Ex. “L”).</p>	<p>by stopping at the corner of the pool table.</p> <p>Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 20:20-21:7; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 41:13-42:2; Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 20:20-21:7; Ex. 7 to Leap Decl. (“Alcala Depo.”) at 47:11-15.</p> <p>When Mr. Perez stopped at the end of the pool table, the deputies could see that his hands were visibly empty. Ex. 2 to Leap Decl. (“McCarthy Depo.”) at 41:13-25. Ex. 5 to Leap Decl. (“Stone Depo.”) at 26:10-18; Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 29:10-15.</p> <p>Sergeant Gaytan then instructed Mr. Perez to turn around and get on his knees.</p> <p>Belt Recording of Sergeant Luke Gaytan (“Incident Audio”) attached to Declaration of Kayleigh Anderson (“Anderson Decl.”) as Exhibit J at 30:29-30:59; Ex. 7 to Leap Decl. (“Alcala Depo.”) at 52:9-14.</p> <p>After Sergeant Gaytan instructed Mr. Perez to turn around and get on his knees, Mr. Perez took an approximately half-foot step back with his left foot and began to turn to his left.</p> <p>Ex. 1 to Leap Decl. (“Moore Depo.”) at 41:4-9, 55:1-3; Ex. 2 to Leap Decl.</p>
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1		(“Pollick Depo.”) at 20:19-24.
2	30. Moving Party’s Response:	
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4	Contrary to Plaintiffs’ assertion, this fact does not speculate to Perez’ state of	
5	mind, rather, the fact states that the <i>deputies watched Perez put his hands up and</i>	
6	<i>shook his head back and forth, with an irritated and frustrated look, without</i>	
7	<i>making eye contact with anyone.</i> See Moore Depo. (Ex. “E”) at 41:10-16;	
8	Gaytan Depo. (Ex. “I”) at 40:23-41:19. Further, Plaintiffs’ dispute is not to the	
9	fact presented, and the evidence submitted does not create a dispute of fact. Thus,	
10	this fact is undisputed for the purpose of this Motion.	
11	31. Suddenly, Perez turned slightly east,	Disputed that Perez made this move
12	stepping back with his left foot, and	“suddenly” as opposed to in
13	pivoting on his right foot.	compliance with commands.
14	Pollick Depo. (Ex. “C”) at 20:25-	Sergeant Gaytan instructed Mr. Perez
15	21:8, 15-25, 22:1; McCarthy Depo.	to stop when Mr. Perez reached the
16	(Ex. “D”) at 52:19-24, 67:17-19,	southwest corner of the pool table, and
17	70:2-9; Moore Depo. (Ex. “E”) at	Mr. Perez complied by stopping at the
18	36:12-14, 18-24, 41:10-22; Olivas	corner of the pool table.
19	Depo. (Ex. “F”) at 20:3-7; Stone	Ex. 6 to Leap Decl. (“Gaytan Depo.”)
20	Depo. (Ex. “G”) at 27:4-28:4, 46:11-	at 20:20-21:7; Ex. 4 to Leap Decl.
21	18, 48:19-49:6; Alcala Depo. (Ex.	(“McCarthy Depo.”) at 41:13-42:2; Ex.
22	“H”) at 48:7-15; Gaytan Depo. (Ex.	6 to Leap Decl. (“Gaytan Depo.”) at
23	“I”) at 32:18-33:4, 40:5-13; Incident	20:20-21:7; Ex. 7 to Leap Decl.
24	Audio (Ex. “J”) at 28:00-31:50.	(“Alcala Depo.”) at 47:11-15.
25		When Mr. Perez stopped at the end of
26		the pool table, the deputies could see
27		that his hands were visibly empty. Ex.
28		2 to Leap Decl. (“McCarthy Depo.”) at
		41:13-25. Ex. 5 to Leap Decl. (“Stone
		Depo.”) at 26:10-18; Ex. 6 to Leap
		Decl. (“Gaytan Depo.”) at 29:10-15.
		Sergeant Gaytan then instructed Mr.

	<p>Perez to turn around and get on his knees.</p> <p>Belt Recording of Sergeant Luke Gaytan (“Incident Audio”) attached to Declaration of Kayleigh Anderson (“Anderson Decl.”) as Exhibit J at 30:29-30:59; Ex. 7 to Leap Decl. (“Alcala Depo.”) at 52:9-14.</p> <p>After Sergeant Gaytan instructed Mr. Perez to turn around and get on his knees, Mr. Perez took an approximately half-foot step back with his left foot and began to turn to his left.</p> <p>Ex. 1 to Leap Decl. (“Moore Depo.”) at 41:4-9, 55:1-3; Ex. 2 to Leap Decl. (“Pollick Depo.”) at 20:19-24.</p>
<p>31. Moving Party’s Response:</p> <p>Plaintiffs’ dispute to this fact is not material to Plaintiffs’ claims and has no bearing on Defendants’ liability in this action. Plaintiffs’ do not present any evidence to dispute that Perez turned slightly east, stepping back with his left foot, and pivoting on his right foot. Further, Plaintiffs’ dispute is not to the fact presented, and the evidence submitted does not create a dispute of fact. Thus, this fact is undisputed for the purpose of this Motion.</p>	
<p>32. As soon as Perez stepped back, Deputy Stone deployed a less-lethal 40-millimeter round, as was discussed in the SED Teams planning briefing, which hit Perez somewhere between his waist and the top of his shoulders.</p> <p>Pollick Depo. (Ex. “C”) at 20:25-</p>	<p>Disputed that the less-lethal deployment was reasonable.</p> <p>After Sergeant Gaytan instructed Mr. Perez to turn around and get on his knees, Mr. Perez took an approximately half-foot step back with his left foot and began to turn to his left.</p>

21:8; McCarthy Depo. (Ex. “D”) at 52:25-53:12, 70:2-9; Moore Depo. (Ex. “E”) at 34:23-35:17, 36:8-14, 41:20-22, 54:10-15; Olivas Depo. (Ex. “F”) at 21:16-22:9, 50:1-3; Stone Depo. (Ex. “G”) at 27:4-28:4, 8-25, 29:1-8, 12-17, 46:11-18, 48:19-49:6; Gaytan Depo. (Ex. “T”) at 28:18-29:9; Incident Audio (Ex. “J”) at 31:49-31:57.

Ex. 1 to Leap Decl. (“Moore Depo.”) at 41:4-9, 55:1-3; Ex. 2 to Leap Decl. (“Pollick Depo.”) at 20:19-24.

Mr. Perez was not advancing or charging at any person, including any deputies when Deputy Stone and Sergeant Gaytan fired their BIP rounds. Ex. 3 to Leap Decl. (“Olivas Depo.”) at 22:21-23; Ex. 5 (“Stone Depo”) at 26:22-11).

Deputy Stone and Sergeant Gaytan observed that Mr. Perez’s hands were empty at the time they deployed their BIP rounds. Ex. 5 to Leap Decl. (“Stone Depo.”) at 26:10-18; Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 29:10-15.

At the time of the second BIP round, Mr. Perez was moving away from the first BIP round and away from the deputies.

Ex. J to Anderson Decl. (“Incident Audio”) at 30:25-31:05; Ex. 3 to Leap Decl. (“Olivas Depo.”) at Ex. 7 to Leap Decl. (“Alcala Depo.”) at 52:9-14; Ex. 5 to Leap Decl. (“Stone Depo.”) at 31:25-33:10.

Mr. Perez was approximately 6-8 feet from the firearm at the time he was struck by the first BIP round. Ex. 5 to Leap Decl. (“Stone Depo.”) at 31:6-10.

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	<p>Based on police training, a BIP round can cause injury. Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 17:15-21.</p> <p>No deputy issued a verbal warning to Mr. Perez that they would deploy less lethal munitions against him prior to deploying less lethal munitions. Ex. 5 to Leap Decl. (“Stone Depo.”) at 38:5-7; Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 36:19-21; Ex. J to Anderson Decl. (“Incident Audio”) at 31:30-31:51.</p> <p>Mr. Perez ran away from the BIP to avoid being struck by additional projectiles. Ex. 5 to Leap Decl. (“Stone Depo.”) at 49:10-25.</p> <p>Basic police training provides that a subject’s common reaction to being struck by less lethal munitions is to run away from the less lethal to avoid being struck by additional projectiles. DeFoe Decl. at ¶ 15; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 56:17-21.</p>
32. Moving Party’s Response:	
<p>The evidence cited by Plaintiffs does not dispute this fact, rather Plaintiffs present additional unrelated and unsupported facts to manufacture a dispute of fact. Importantly, Scott DeFoe’s declaration [Doc. 45-10] is inadmissible. <i>See</i> Defendants’ Evidentiary Objections. Plaintiffs’ dispute is not to the fact presented, and the evidence submitted does not create a dispute of fact. Thus, this fact is undisputed for the purpose of this Motion.</p>	

<p>33. Sergeant Gaytan and Deputy Stone each deployed another less-lethal round at Perez, which also appeared to strike Perez at center mass. However, the less-lethal rounds appeared to be ineffective in gaining Perez' compliance.</p> <p>Pollick Depo. (Ex. "C") at 23:17-25:10; McCarthy Depo. (Ex. "D") at 56:22-57:3, 67:24-68:2; Moore Depo. (Ex. "E") at 34:23-35:17, 54:10-15; Olivas Depo. (Ex. "F") at 22:10-19; Alcala Depo. (Ex. "H") at 49:17-20; Gaytan Depo. (Ex. "I") at 34:9-18; Incident Audio (Ex. "J") at 31:49-31:57.</p>	<p>Disputed that the less-lethal rounds were ineffective.</p> <p>Mr. Perez was struck by two or three 40 millimeter "BIP" rounds within a 12 second timeframe. Ex. J to Anderson Decl. ("Incident Audio") at 31:39-31:50.</p> <p>Mr. Perez flinched in reaction to being struck by the BIP rounds. Ex. 2 to Leap Decl. ("McCarthy Depo.") at 22:19-23:3; Ex. 3 to Leap Decl. ("Olivas Depo.") at 22:6-9; Ex. 4 to Leap Decl. ("McCarthy Depo.") at 55:17-23.</p> <p>Mr. Perez ran away from the BIP to avoid being struck by additional projectiles. Ex. 5 to Leap Decl. ("Stone Depo.") at 49:10-25.</p> <p>Basic police training provides that a subject's common reaction to being struck by less lethal munitions is to run away from the less lethal to avoid being struck by additional projectiles. DeFoe Decl. at ¶ 15; Ex. 4 to Leap Decl. ("McCarthy Depo.") at 56:17-21.</p>
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33. Moving Party's Response:

As an initial matter, contrary to Plaintiffs' assertion Deputy Stone did not state that Perez ran away from the BIP to avoid being struck by additional projectiles. Ex. 5 to Leap Decl. ("Stone Depo.") at 49:10-25.

Further, the evidence cited by Plaintiffs does not dispute this fact, rather Plaintiffs

present additional unrelated and unsupported facts to manufacture a dispute of fact. Importantly, Scott DeFoe’s declaration [Doc. 45-10] is inadmissible. *See* Defendants’ Evidentiary Objections.

Plaintiffs’ dispute is not to the fact presented, and the evidence submitted does not create a dispute of fact. Thus, this fact is undisputed for the purpose of this Motion.

34. Although it appeared to the deputies that Perez was hit with three (3) less-lethal rounds, he accelerated and ran toward where the gun was located at the back of the pool table.

Pollick Depo. (Ex. “C”) at 23:12-17, 27:23-28:4, 30:17-18, 22-25, 41:16-20, 42:6-11; McCarthy Depo. (Ex. “D”) at 65:19-24, 68:3-11, 24-25, 69:1, 6-10; Moore Depo. (Ex. “E”) at 35:22-36:3, 41:23-42:1, 54:16-18, 67:15, 19-21; Gaytan Depo. (Ex. “T”) at 38:1-23.

Disputed that Mr. Perez was running toward the gun.

Mr. Perez ran away from the BIP to avoid being struck by additional projectiles. Ex. 5 to Leap Decl. (“Stone Depo.”) at 49:10-25.

Basic police training provides that a subject’s common reaction to being struck by less lethal munitions is to run away from the less lethal to avoid being struck by additional projectiles. DeFoe Decl. at ¶ 15; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 56:17-21.

34. Moving Party’s Response:

As an initial matter, contrary to Plaintiffs’ assertion Deputy Stone did not state that Perez ran away from the BIP to avoid being struck by additional projectiles. Ex. 5 to Leap Decl. (“Stone Depo.”) at 49:10-25.

Further, the evidence cited by Plaintiffs does not dispute this fact, rather Plaintiffs present additional unrelated and unsupported facts to manufacture a dispute of fact. Importantly, Scott DeFoe’s declaration [Doc. 45-10] is inadmissible. *See* Defendants’ Evidentiary Objections.

Plaintiffs’ dispute is not to the fact presented, and the evidence submitted does not create a dispute of fact. Thus, this fact is undisputed for the purpose of this Motion.

1	35. After the less-lethal rounds had been	Disputed that the less-lethal rounds
2	deployed and were ineffective in	were ineffective.
3	gaining Perez' compliance, and in	
4	response to Perez accelerating toward	The deputies failed to give Mr. Perez
5	the back of the pool table where the	time to comply with the 40 mm rounds.
6	gun was located, Corporal Cory	DeFoe Decl. at ¶ 16-17.
7	McCarthy, Deputy Olivas, Deputy	
8	Pollick, and Deputy Moore each fired	Mr. Perez was struck by two or three
9	lethal rounds, at Perez in order to	40 millimeter "BIP" rounds within a 12
10	stop the immediate threat they	second timeframe.
11	perceived from Perez' actions.	Ex. J to Anderson Decl. ("Incident
12		Audio") at 31:39-31:50.
13	Pollick Depo. (Ex. "C") at 30:6-18,	
14	22-25, 31:2-12, 55:22-56:1, 20-22;	Mr. Perez flinched in reaction to being
15	McCarthy Depo. (Ex. "D") at 59:4-	struck by the BIP rounds.
16	11; 60:14-24; 63:19-22; 65:13-18;	Ex. 2 to Leap Decl. ("McCarthy
17	Moore Depo. (Ex. "E") at 43:1-8, 11-	Depo.") at 22:19-23:3; Ex. 3 to Leap
18	19, 64:19-25; Olivas Depo. (Ex. "F")	Decl. ("Olivas Depo.") at 22:6-9; Ex. 4
19	at 24:13-15; Incident Audio (Ex. "J")	to Leap Decl. ("McCarthy Depo.") at
20	at 31:49-31:57.	55:17-23.
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22		Mr. Perez ran away from the BIP to
23		avoid being struck by additional
24		projectiles. Ex. 5 to Leap Decl. ("Stone
25		Depo.") at 49:10-25.
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27		Disputed that an objectively reasonable
28		officer in the position of the deputies
		would have formed an objectively
		reasonable belief that Mr. Perez posed
		an immediate threat of death or serious
		bodily injury.
		Basic police training provides that a
		subject's common reaction to being
		struck by less lethal munitions is to run
		away from the less lethal to avoid
		being struck by additional projectiles.

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DeFoe Decl. at ¶ 15; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 56:17-21.

At the time of all the shots, the deputies knew the firearm was on the ground, behind the pool table. Ex. 1 to Leap Decl. (“Moore Depo.”) at 67:10-16; 67:23-24; 68:7-23; Ex. 2 to Leap Decl. (“Pollick Depo.”) at 12:15-18, 15:9-17, 22:15-18, 41:16-42:11, Ex. 3 to Leap Decl. (“Olivas Depo.”) at 17:16-18, 62:9-21; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 66:19-67:7, 69:6-13; Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 37:9-16.

When the shots started, the deputies could see Mr. Perez’s hands and could see that there was nothing in his hands. Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 41:13-25; Ex. 5 to Leap Decl. (“Stone Depo.”) at 26:10-18; Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 29:10-15.

The Deputies did not see Mr. Perez reach for the gun after he placed it on the ground, prior to the shooting. Ex. 3 to Leap Decl. (“Olivas Depo.”) at 62:9-14; Ex. 5 (“Stone Depo.”) at 43:16, Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 37:9-16.

Under the facts of this case, the Deputies could not justify shooting at Mr. Perez simply because Mr. Perez was running away.

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DeFoe Decl. at ¶ 6, 8.

Mr. Perez was moving away from the Deputies during all of the shots. Ex. 1 to Leap Decl. (“Moore Depo.”) at 45:17-46:11; Ex. 2 to Leap Decl. (“Pollick Depo.”) at 27:2-11, 28:17-29:5, 43:8-11; Ex. 3 to Leap Decl. (“Olivas Depo.”) at 29:11-21, 32:1821; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 59:7-11; 61:7-20.

The trajectories of the bullet wounds indicate that Mr. Perez was falling to the ground or on the ground when he was shot.

Declaration of Bennet Omalu, M.D. (“Omalu Decl.”) at ¶ 13(a-d, f-g, i).

Basic police training instructs, and the deputies were trained that they cannot shoot someone merely because they see a gun in that person’s hands. Ex. 1 to Leap Decl. (“Moore Depo.”) at 66:2-18; Ex. 3 to Leap Decl. (“Olivas Depo.”) at 60:16-21; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 12:19-21, 69:3-5.

Pursuant to the deputies’ training, it would not have been appropriate to shoot Mr. Perez when he was sitting on the bar stool with the firearm in his hand with his finger on the trigger. Ex. 1 to Leap Decl. (“Moore Depo.”) at 28:20-29:7; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 33:5-11.

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Mr. Perez never pointed the firearm at anyone, including the reporting party. Ex. 1 to Leap Decl. (“Moore Depo.”) at 22:11-14; Ex. 2 to Leap Decl. (“Pollick Depo.”) at 15:18-23; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 66:19-67:7; Deposition of Joshua Stone (“Stone Depo.”) attached to Leap Decl. as Exhibit 5, at 47:10-15; Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 9:15-25, 10:14-22’ Ex. 1 to Leap Decl. (“Moore Depo.”) at 66:20-24); Ex. 7 to Leap Decl. (“Alcala Depo.”) at 27:4-13; 32:7-23; Ex. 8 to Leap Decl. (“Fregoso Depo.”) at 46:19-50:5.

Mr. Perez never fired any shots from the gun. Ex. 2 to Leap Decl. (“Pollick Depo.”) at 15:18-16:6; 32:19-20; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 66:19-17:7; Ex. 5 to Leap Decl. (“Stone Depo.”) at 56:5-14.

Mr. Perez never threatened to fire the gun. Ex. 1 to Leap Decl. (“Moore Depo.”) at 22:11-24, 66:20-24; Ex. 2 to Leap Decl. (“Pollick Depo.”) at 15:9-16:24, 61:13-62:6; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 66:19-67:7; Ex.5 to Leap Decl. (“Stone Depo.”) at 24:7-16, 47:10-15; Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 9:15-25, 10:14-22; Ex. 7 to Leap Decl. (“Alcala Depo.”) at 20:22-25, 27:4-13; 32:7-23; Ex. 8 Leap

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	<p>Decl. (“Fregoso Depo.”) at 46:19-50:5.</p> <p>When Mr. Perez was holding the gun when he sat on the stool, he never raised the gun.</p> <p>Ex. 1 to Leap Decl. (“Moore Depo.”) at 22:11-14, 66:20-24; Ex. 2 to Leap Decl. (“Pollick Depo.”) at 15:18-23; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 66:19-67:7; Ex. 5 to Leap Decl. (“Stone Depo.”) at 24:7-16, 47:10-15; Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 9:15-25, 10:14-22; Ex. 7 to Leap Decl. (“Alcala Depo.”) at 27:413; 32:7-23.</p> <p>At no point while Mr. Perez’s finger was on the trigger of the gun did any of the Deputies use force against Mr. Perez.</p> <p>Ex. 5 to Leap Decl. (“Stone Depo.”) at 47:23-48:9.</p>
<p>35. Moving Party’s Response:</p> <p>As an initial matter, contrary to Plaintiffs’ assertion Deputy Stone did not state that Perez ran away from the BIP to avoid being struck by additional projectiles. Ex. 5 to Leap Decl. (“Stone Depo.”) at 49:10-25.</p> <p>Further, the evidence cited by Plaintiffs does not dispute this fact, rather Plaintiffs present additional unrelated and unsupported facts to manufacture a dispute of fact. Importantly, Scott DeFoe’s declaration [Doc. 45-10] and Bennet Omalu M.D.’s declaration [Doc. 45-11] are inadmissible. <i>See</i> Defendants’ Evidentiary Objections.</p> <p>Plaintiffs’ dispute to this fact is not material to Plaintiffs’ claims and has no bearing on Defendants’ liability in this action. Plaintiffs’ do not dispute that Corporal Cory McCarthy, Deputy Olivas, Deputy Pollick, and Deputy Moore each</p>	

fired lethal rounds, at Perez in order to *stop the immediate threat they perceived from Perez' actions*.

Accordingly, Plaintiffs' dispute is not to the fact presented, and the evidence submitted does not create a dispute of fact. Thus, this fact is undisputed for the purpose of this Motion.

36. The deputies fired at Perez as he ran toward the back of the garage, rounding the corner of the pool table, dropped his center of gravity as if crouching down behind the pool table, within arms' reach of where the gun was located on the floor. The deputies reasonably believed that Perez was trying to get to the gun to shoot someone.

Pollick Depo. (Ex. "C") at 27:2-8, 28:13-21; 39:16-18, 21-24. 56:20-22; McCarthy Depo. (Ex. "D") at 59:4-11, 60:19-24, 65:13-18, 68:24-69:1, 6-10; Moore Depo. (Ex. "E") at 43:11-19, 44:2-12, 45:3-4, 8-12, 48:4-6, 11-14, 52:7-13; Olivas Depo. (Ex. "F") at 32:11-13, 22-25, 33:1-3; Stone Depo. (Ex. "G") at 45:22-46:3, 7-18, 50:4-7, 11-15; Gaytan Depo. (Ex. "I") at 38:1-23.

Disputed that it was reasonable for the deputies to believe that Perez was trying to get the gun to shoot someone.

Mr. Perez did not start running until the less-lethal was deployed, and Mr. Perez was running away from the BIP to avoid being struck by additional projectiles.

Ex. 5 to Leap Decl. ("Stone Depo.") at 49:10-25.

Basic police training provides that a subject's common reaction to being struck by less lethal munitions is to run away from the less lethal to avoid being struck by additional projectiles. DeFoe Decl. at ¶ 15; Ex. 4 to Leap Decl. ("McCarthy Depo.") at 56:17-21.

At the time of all the shots, the deputies knew the firearm was on the ground, behind the pool table. Ex. 1 to Leap Decl. ("Moore Depo.") at 67:10-16; 67:23-24; 68:7-23; Ex. 2 to Leap Decl. ("Pollick Depo.") at 12:15-18, 15:9-17, 22:15-18, 41:16-42:11, Ex. 3 to Leap Decl. ("Olivas Depo.") at 17:16-18, 62:9-21; Ex. 4 to Leap Decl. ("McCarthy Depo.") at 66:19-67:7,

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69:6-13; Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 37:9-16.
When the shots started, the deputies could see Mr. Perez’s hands and could see that there was nothing in his hands. Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 41:13-25; Ex. 5 to Leap Decl. (“Stone Depo.”) at 26:10-18; Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 29:10-15.
The Deputies did not see Mr. Perez reach for the gun after he placed it on the ground, prior to the shooting. Ex. 3 to Leap Decl. (“Olivas Depo.”) at 62:9-14; Ex. 5 (“Stone Depo.”) at 43:1- 6, Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 37:9-16.
Under the facts of this case, the Deputies could not justify shooting at Mr. Perez simply because Mr. Perez was running away. DeFoe Decl. at ¶ 6, 8.
Mr. Perez was moving away from the Deputies during all of the shots. Ex. 1 to Leap Decl. (“Moore Depo.”) at 45:17-46:11; Ex. 2 to Leap Decl. (“Pollick Depo.”) at 27:2-11, 28:17-29:5, 43:8-11; Ex. 3 to Leap Decl. (“Olivas Depo.”) at 29:11-21, 32:1821; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 59:7-11; 61:7-20.
The trajectories of the bullet wounds

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indicate that Mr. Perez was falling to the ground or on the ground when he was shot.

Declaration of Bennet Omalu, M.D. (“Omalu Decl.”) at ¶ 13(a-d, f-g, i).

Basic police training instructs, and the deputies were trained that they cannot shoot someone merely because they see a gun in that person’s hands. Ex. 1 to Leap Decl. (“Moore Depo.”) at 66:2-18; Ex. 3 to Leap Decl. (“Olivas Depo.”) at 60:16-21; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 12:19-21, 69:3-5.

Pursuant to the deputies’ training, it would not have been appropriate to shoot Mr. Perez when he was sitting on the bar stool with the firearm in his hand with his finger on the trigger. Ex. 1 to Leap Decl. (“Moore Depo.”) at 28:20-29:7; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 33:5-11.

At no point while Mr. Perez’s finger was on the trigger of the gun did any of the Deputies use force against Mr. Perez.

Ex. 5 to Leap Decl. (“Stone Depo.”) at 47:23-48:9.

When Mr. Perez was holding the gun when he sat on the stool, he never raised the gun.

Ex. 1 to Leap Decl. (“Moore Depo.”) at 22:11-14, 66:20-24; Ex. 2 to Leap

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Decl. (“Pollick Depo.”) at 15:18-23; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 66:19-67:7; Ex. 5 to Leap Decl. (“Stone Depo.”) at 24:7-16, 47:10-15; Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 9:15-25, 10:14-22; Ex. 7 to Leap Decl. (“Alcala Depo.”) at 27:413; 32:7-23.

Mr. Perez never pointed the firearm at anyone, including the reporting party. Ex. 1 to Leap Decl. (“Moore Depo.”) at 22:11-14; Ex. 2 to Leap Decl. (“Pollick Depo.”) at 15:18-23; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 66:19-67:7; Deposition of Joshua Stone (“Stone Depo.”) attached to Leap Decl. as Exhibit 5, at 47:10-15; Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 9:15-25, 10:14-22’ Ex. 1 to Leap Decl. (“Moore Depo.”) at 66:2024); Ex. 7 to Leap Decl. (“Alcala Depo.”) at 27:4-13; 32:7-23; Ex. 8 to Leap Decl. (“Fregoso Depo.”) at 46:1950:5.

Mr. Perez never fired any shots from the gun. Ex. 2 to Leap Decl. (“Pollick Depo.”) at 15:18-16:6; 32:19-20; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 66:19-17:7; Ex. 5 to Leap Decl. (“Stone Depo.”) at 56:5-14.

Mr. Perez never threatened to fire the gun. Ex. 1 to Leap Decl. (“Moore Depo.”) at 22:11-24, 66:20-24; Ex. 2 to Leap

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	<p>Decl. (“Pollick Depo.”) at 15:9-16:24, 61:13-62:6; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 66:19-67:7; Ex. 5 to Leap Decl. (“Stone Depo.”) at 24:7-16, 47:10-15; Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 9:15-25, 10:14-22; Ex. 7 to Leap Decl. (“Alcala Depo.”) at 20:22-25, 27:4-13; 32:7-23; Ex. 8 Leap Decl. (“Fregoso Depo.”) at 46:19-50:5.</p> <p>Perez never verbally threatened to injure anyone.</p> <p>Ex. 2 to Leap Decl. (“Pollick Depo.”) at 61:13-24; Deposition of Anthony Alcala (“Alcala Depo.”) attached as “Exhibit 7” to Leap Decl., at 20:22-25, Deposition of Helen Fregoso (“Fregoso Depo.”) attached as “Exhibit 8” to Leap Decl. at 46:19-50:5.</p>
<p>36. Moving Party’s Response:</p> <p>As an initial matter, contrary to Plaintiffs’ assertion Deputy Stone did not state that Perez ran away from the BIP to avoid being struck by additional projectiles. Ex. 5 to Leap Decl. (“Stone Depo.”) at 49:10-25.</p> <p>Further, the evidence cited by Plaintiffs does not dispute this fact, rather Plaintiffs present additional unrelated and unsupported facts to manufacture a dispute of fact. Plaintiffs’ dispute to this fact is not material to Plaintiffs’ claims and has no bearing on Defendants’ liability in this action. Importantly, Scott DeFoe’s declaration [Doc. 45-10] and Bennet Omalu M.D.’s declaration [Doc. 45-11] are inadmissible. <i>See</i> Defendants’ Evidentiary Objections.</p> <p>Plaintiffs’ do not dispute that <i>the deputies reasonably believed that Perez was trying to get to the gun to shoot someone</i>, and that <i>Perez was within arms’ reach of where the gun was located on the floor</i>. <i>See</i> Pollick Depo. (Ex. “C”) at 27:2-8, 28:13-21; 39:16-18, 21-24. 56:20-22; McCarthy Depo. (Ex. “D”) at 59:4-11,</p>	

60:19-24, 65:13-18, 68:24-69:1, 6-10; Moore Depo. (Ex. “E”) at 43:11-19, 44:2-12, 45:3-4, 8-12, 48:4-6, 11-14, 52:7-13; Olivas Depo. (Ex. “F”) at 32:11-13, 22-25, 33:1-3; Stone Depo. (Ex. “G”) at 45:22-46:3, 7-18, 50:4-7, 11-15; Gaytan Depo. (Ex. “I”) at 38:1-23.

Accordingly, Plaintiffs’ dispute is not to the fact presented, and the evidence submitted does not create a dispute of fact. Thus, this fact is undisputed for the purpose of this Motion.

37. Based on the totality of the circumstances, Perez having the gun in his hands for several hours and having every opportunity to surrender peacefully, the deputies had no reason to believe that Perez was running back into the garage for any other reason than to get back to the gun.

Pollick Depo. (Ex. “C”) at 39:16-18, 21-24, 40:4-5, 9-13; McCarthy Depo. (Ex. “D”) at 65:13-18; Stone Depo. (Ex. “G”) at 45:22-46:3; Gaytan Depo. (Ex. “I”) at 38:14-23.

Disputed.

Mr. Perez was running away from the BIP to avoid being struck by additional projectiles.
Ex. 5 to Leap Decl. (“Stone Depo.”) at 49:10-25.

Basic police training provides that a subject’s common reaction to being struck by less lethal munitions is to run away from the less lethal to avoid being struck by additional projectiles.
DeFoe Decl. at ¶ 15; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 56:17-21.

At the time of all the shots, the deputies knew the firearm was on the ground, behind the pool table.
Ex. 1 to Leap Decl. (“Moore Depo.”) at 67:10-16; 67:23-24; 68:7-23; Ex. 2 to Leap Decl. (“Pollick Depo.”) at 12:15-18, 15:9-17, 22:15-18, 41:16-42:11, Ex. 3 to Leap Decl. (“Olivas Depo.”) at 17:16-18, 62:9-21; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 66:19-67:7, 69:6-13; Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 37:9-16.

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When the shots started, the deputies could see Mr. Perez's hands and could see that there was nothing in his hands. Ex. 4 to Leap Decl. ("McCarthy Depo.") at 41:13-25; Ex. 5 to Leap Decl. ("Stone Depo.") at 26:10-18; Ex. 6 to Leap Decl. ("Gaytan Depo.") at 29:10-15.

The Deputies did not see Mr. Perez reach for the gun after he placed it on the ground, prior to the shooting. Ex. 3 to Leap Decl. ("Olivas Depo.") at 62:9-14; Ex. 5 ("Stone Depo.") at 43:1-6, Ex. 6 to Leap Decl. ("Gaytan Depo.") at 37:9-16.

Under the facts of this case, the Deputies could not justify shooting at Mr. Perez simply because Mr. Perez was running away. DeFoe Decl. at ¶ 6, 8.

Mr. Perez was moving away from the Deputies during all of the shots. Ex. 1 to Leap Decl. ("Moore Depo.") at 45:17-46:11; Ex. 2 to Leap Decl. ("Pollick Depo.") at 27:2-11, 28:17-29:5, 43:8-11; Ex. 3 to Leap Decl. ("Olivas Depo.") at 29:11-21, 32:1821; Ex. 4 to Leap Decl. ("McCarthy Depo.") at 59:7-11; 61:7-20.

The trajectories of the bullet wounds indicate that Mr. Perez was falling to the ground or on the ground when he was shot.

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Declaration of Bennet Omalu, M.D.
("Omalu Decl.") at ¶ 13(a-d, f-g, i).

Basic police training instructs, and the deputies were trained that they cannot shoot someone merely because they see a gun in that person's hands. Ex. 1 to Leap Decl. ("Moore Depo.") at 66:2-18; Ex. 3 to Leap Decl. ("Olivas Depo.") at 60:16-21; Ex. 4 to Leap Decl. ("McCarthy Depo.") at 12:19-21, 69:3-5.

Pursuant to the deputies' training, it would not have been appropriate to shoot Mr. Perez when he was sitting on the bar stool with the firearm in his hand with his finger on the trigger. Ex. 1 to Leap Decl. ("Moore Depo.") at 28:20-29:7; Ex. 4 to Leap Decl. ("McCarthy Depo.") at 33:5-11.

At no point while Mr. Perez's finger was on the trigger of the gun did any of the Deputies use force against Mr. Perez.
Ex. 5 to Leap Decl. ("Stone Depo.") at 47:23-48:9.

When Mr. Perez was holding the gun when he sat on the stool, he never raised the gun.
Ex. 1 to Leap Decl. ("Moore Depo.") at 22:11-14, 66:20-24; Ex. 2 to Leap Decl. ("Pollick Depo.") at 15:18-23; Ex. 4 to Leap Decl. ("McCarthy Depo.") at 66:19-67:7; Ex. 5 to Leap

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Decl. (“Stone Depo.”) at 24:7-16, 47:10-15; Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 9:15-25, 10:14-22; Ex. 7 to Leap Decl. (“Alcala Depo.”) at 27:413; 32:7-23.

Mr. Perez never pointed the firearm at anyone, including the reporting party. Ex. 1 to Leap Decl. (“Moore Depo.”) at 22:11-14; Ex. 2 to Leap Decl. (“Pollick Depo.”) at 15:18-23; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 66:19-67:7; Deposition of Joshua Stone (“Stone Depo.”) attached to Leap Decl. as Exhibit 5, at 47:10-15; Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 9:15-25, 10:14-22’ Ex. 1 to Leap Decl. (“Moore Depo.”) at 66:2024); Ex. 7 to Leap Decl. (“Alcala Depo.”) at 27:4-13; 32:7-23; Ex. 8 to Leap Decl. (“Fregoso Depo.”) at 46:1950:5.

Mr. Perez never fired any shots from the gun. Ex. 2 to Leap Decl. (“Pollick Depo.”) at 15:18-16:6; 32:19-20; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 66:19-17:7; Ex. 5 to Leap Decl. (“Stone Depo.”) at 56:5-14.

Mr. Perez never threatened to fire the gun. Ex. 1 to Leap Decl. (“Moore Depo.”) at 22:11-24, 66:20-24; Ex. 2 to Leap Decl. (“Pollick Depo.”) at 15:9-16:24, 61:13-62:6; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 66:19-67:7; Ex.

1		5 to Leap Decl. (“Stone Depo.”) at
2		24:7-16, 47:10-15; Ex. 6 to Leap Decl.
3		(“Gaytan Depo.”) at 9:15-25, 10:14-22;
4		Ex. 7 to Leap Decl. (“Alcala Depo.”) at
5		20:22-25, 27:4-13; 32:7-23; Ex. 8 Leap
6		Decl. (“Fregoso Depo.”) at 46:19-50:5.
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8		Perez never verbally threatened to
9		injure anyone.
10		Ex. 2 to Leap Decl. (“Pollick Depo.”)
11		at 61:13-24; Deposition of Anthony
12		Alcala (“Alcala Depo.”) attached as
13		“Exhibit 7” to Leap Decl., at 20:22-25,
14		Deposition of Helen Fregoso (“Fregoso
15		Depo.”) attached as “Exhibit 8” to
16		Leap Decl. at 46:19-50:5.

17	37. Moving Party’s Response:
18	As an initial matter, contrary to Plaintiffs’ assertion Deputy Stone did not state
19	that Perez ran away from the BIP to avoid being struck by additional projectiles.
20	Ex. 5 to Leap Decl. (“Stone Depo.”) at 49:10-25.
21	Further, the evidence cited by Plaintiffs does not dispute this fact, rather Plaintiffs
22	present additional unrelated and unsupported facts to manufacture a dispute of
23	fact. Importantly, Scott DeFoe’s declaration [Doc. 45-10] and Bennet Omalu
24	M.D.’s declaration [Doc. 45-11] are inadmissible. <i>See</i> Defendants’ Evidentiary
25	Objections.
26	Plaintiffs’ dispute to this fact is not material to Plaintiffs’ claims and has no
27	bearing on Defendants’ liability in this action. Plaintiffs’ do not dispute that the
28	<i>deputies believed that Perez was running back into the garage for any other</i>
	<i>reason than to get back to the gun.</i> <i>See</i> Pollick Depo. (Ex. “C”) at 39:16-18, 21-
	24, 40:4-5, 9-13; McCarthy Depo. (Ex. “D”) at 65:13-18; Stone Depo. (Ex. “G”)
	at 45:22-46:3; Gaytan Depo. (Ex. “I”) at 38:14-23.
	Accordingly, Plaintiffs’ dispute is not to the fact presented, and the evidence

submitted does not create a dispute of fact. Thus, this fact is undisputed for the purpose of this Motion.

38. Sergeant Gaytan ordered the deputies to stop shooting as it appeared Perez had fallen to the ground and had stopped moving.

Pollick Depo. (Ex. "C") at 44:6-8; Gaytan Depo. (Ex. "I") at 45:10-46:21; Incident Audio (Ex. "J") at 31:49-32:10.

Disputed to the extent that this mischaracterizes the evidence, as the deputies fired shots at Perez as he was going to the ground and after he was on the ground.

Declaration of Bennet Omalu, M.D. ("Omalu Decl.") at ¶ 13(a-d, f-g, i).

During Deputy Pollick's second volley of shots, he was aiming at Mr. Perez's lower legs after Mr. Perez was on the ground behind the pool table. Ex. 2 to Leap Decl. ("Pollick Depo.") at 10:1012; 27:2-11; 33:1-17; 43:8-11.

38. Moving Party's Response:

The evidence cited by Plaintiffs does not dispute this fact, rather Plaintiffs present additional unrelated and unsupported facts to manufacture a dispute of fact. Importantly, Bennet Omalu M.D.'s declaration [Doc. 45-11] is inadmissible. *See* Defendants' Evidentiary Objections. Plaintiffs' dispute to this fact is not material to Plaintiffs' claims and has no bearing on Defendant's liability in this action. Thus, this fact is undisputed for the purpose of this Motion.

39. The deputies at the scene retrieved an SED robot, to confirm that Perez was no longer a threat. Once it was confirmed Perez was no longer moving, the SED Team approached and secured to scene.

Gaytan Decl., ¶ 18; McCarthy Decl., ¶ 19; Olivas Decl., ¶ 19; Pollick

Disputed that Mr. Perez was ever a threat.

Mr. Perez was running away from the BIP to avoid being struck by additional projectiles.

Ex. 5 to Leap Decl. ("Stone Depo.") at 49:10-25.

Decl., ¶ 19; Moore Decl., ¶ 19; Stone Decl., ¶ 18; Pollick Depo. (Ex. “C”) at 44:9-13, 45:4-9, McCarthy Depo. (Ex. “D”) at 70:11-12, 16-19; Incident Audio (Ex. “J”) at 32:10-36:00.

Basic police training provides that a subject’s common reaction to being struck by less lethal munitions is to run away from the less lethal to avoid being struck by additional projectiles. DeFoe Decl. at ¶ 15; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 56:17-21.

At the time of all the shots, the deputies knew the firearm was on the ground, behind the pool table. Ex. 1 to Leap Decl. (“Moore Depo.”) at 67:10-16; 67:23-24; 68:7-23; Ex. 2 to Leap Decl. (“Pollick Depo”) at 12:15-18, 15:9-17, 22:15-18, 41:16-42:11, Ex. 3 to Leap Decl. (“Olivas Depo”) at 17:16-18, 62:9-21; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 66:19-67:7, 69:6-13; Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 37:9-16.

When the shots started, the deputies could see Mr. Perez’s hands and could see that there was nothing in his hands. Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 41:13-25; Ex. 5 to Leap Decl. (“Stone Depo.”) at 26:10-18; Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 29:10-15.

The Deputies did not see Mr. Perez reach for the gun after he placed it on the ground, prior to the shooting. Ex. 3 to Leap Decl. (“Olivas Depo.”) at 62:9-14; Ex. 5 (“Stone Depo.”) at 43:1-6, Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 37:9-16.

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Under the facts of this case, the Deputies could not justify shooting at Mr. Perez simply because Mr. Perez was running away.
DeFoe Decl. at ¶ 6, 8.

Mr. Perez was moving away from the Deputies during all of the shots. Ex. 1 to Leap Decl. (“Moore Depo.”) at 45:17-46:11; Ex. 2 to Leap Decl. (“Pollick Depo.”) at 27:2-11, 28:17-29:5, 43:8-11; Ex. 3 to Leap Decl. (“Olivas Depo.”) at 29:11-21, 32:1821; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 59:7-11; 61:7-20.

The trajectories of the bullet wounds indicate that Mr. Perez was falling to the ground or on the ground when he was shot.

Declaration of Bennet Omalu, M.D. (“Omalu Decl.”) at ¶ 13(a-d, f-g, i).

Basic police training instructs, and the deputies were trained that they cannot shoot someone merely because they see a gun in that person’s hands. Ex. 1 to Leap Decl. (“Moore Depo.”) at 66:2-18; Ex. 3 to Leap Decl. (“Olivas Depo.”) at 60:16-21; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 12:19-21, 69:3-5.

Pursuant to the deputies’ training, it would not have been appropriate to shoot Mr. Perez when he was sitting on

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the bar stool with the firearm in his hand with his finger on the trigger. Ex. 1 to Leap Decl. (“Moore Depo.”) at 28:20-29:7; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 33:5-11.

At no point while Mr. Perez’s finger was on the trigger of the gun did any of the Deputies use force against Mr. Perez.
Ex. 5 to Leap Decl. (“Stone Depo.”) at 47:23-48:9.

When Mr. Perez was holding the gun when he sat on the stool, he never raised the gun.
Ex. 1 to Leap Decl. (“Moore Depo.”) at 22:11-14, 66:20-24; Ex. 2 to Leap Decl. (“Pollick Depo.”) at 15:18-23; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 66:19-67:7; Ex. 5 to Leap Decl. (“Stone Depo.”) at 24:7-16, 47:10-15; Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 9:15-25, 10:14-22; Ex. 7 to Leap Decl. (“Alcala Depo.”) at 27:413; 32:7-23.

Mr. Perez never pointed the firearm at anyone, including the reporting party. Ex. 1 to Leap Decl. (“Moore Depo.”) at 22:11-14; Ex. 2 to Leap Decl. (“Pollick Depo.”) at 15:18-23; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 66:19-67:7; Deposition of Joshua Stone (“Stone Depo.”) attached to Leap Decl. as Exhibit 5, at 47:10-15; Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 9:15-25,

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10:14-22' Ex. 1 to Leap Decl. ("Moore Depo.") at 66:2024); Ex. 7 to Leap Decl. ("Alcala Depo.") at 27:4-13; 32:7-23; Ex. 8 to Leap Decl. ("Fregoso Depo.") at 46:1950:5.

Mr. Perez never fired any shots from the gun.

Ex. 2 to Leap Decl. ("Pollick Depo.") at 15:18-16:6; 32:19-20; Ex. 4 to Leap Decl. ("McCarthy Depo.") at 66:19-17:7; Ex. 5 to Leap Decl. ("Stone Depo.") at 56:5-14.

Mr. Perez never threatened to fire the gun.

Ex. 1 to Leap Decl. ("Moore Depo.") at 22:11-24, 66:20-24; Ex. 2 to Leap Decl. ("Pollick Depo.") at 15:9-16:24, 61:13-62:6; Ex. 4 to Leap Decl. ("McCarthy Depo.") at 66:19-67:7; Ex. 5 to Leap Decl. ("Stone Depo.") at 24:7-16, 47:10-15; Ex. 6 to Leap Decl. ("Gaytan Depo.") at 9:15-25, 10:14-22; Ex. 7 to Leap Decl. ("Alcala Depo.") at 20:22-25, 27:4-13; 32:7-23; Ex. 8 Leap Decl. ("Fregoso Depo.") at 46:19-50:5.

Perez never verbally threatened to injure anyone.

Ex. 2 to Leap Decl. ("Pollick Depo.") at 61:13-24; Deposition of Anthony Alcala ("Alcala Depo.") attached as "Exhibit 7" to Leap Decl., at 20:22-25, Deposition of Helen Fregoso ("Fregoso Depo.") attached as "Exhibit 8" to Leap Decl. at 46:19-50:5.

39. Moving Party's Response:

As an initial matter, contrary to Plaintiffs' assertion Deputy Stone did not state that Perez ran away from the BIP to avoid being struck by additional projectiles. Ex. 5 to Leap Decl. ("Stone Depo.") at 49:10-25.

Further, the evidence cited by Plaintiffs does not dispute this fact, rather Plaintiffs present additional unrelated and unsupported facts to manufacture a dispute of fact. Importantly, Scott DeFoe's declaration [Doc. 45-10] and Bennet Omalu M.D.'s declaration [Doc. 45-11] are inadmissible. *See* Defendants' Evidentiary Objections.

Plaintiffs' dispute to this fact is not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action. Accordingly, Plaintiffs' dispute is not to the fact presented, and the evidence submitted does not create a dispute of fact. Thus, this fact is undisputed for the purpose of this Motion.

40. Corporal Pollick and Corporal McCarthy approached Perez and saw that Perez was laying on top of the gun.

Pollick Depo. (Ex. "C") at 49:10-21; McCarthy Depo. (Ex. "D") at 71:1-4, 8-12; Moore Depo. (Ex. "E") at 82:1-11, 83:13-22; Incident Audio (Ex. "J") at 36:00-37:20.

Disputed to the extent that Perez was lying on top of the gun.

When the Deputies approached Mr. Perez after the shooting, McCarthy observed the gun near Mr. Perez's, left arm. Ex. 4 to Leap Decl. ("McCarthy Depo.") at 71:11-16.

40. Moving Party's Response:

Plaintiffs' dispute to this fact is not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action. Accordingly, Plaintiffs' dispute is not to the fact presented, and the evidence submitted does not create a dispute of fact. Thus, this fact is undisputed for the purpose of this Motion.

41. Deputy Stone saw the gun sticking out from under Perez' stomach where his hands were also located, and

Undisputed. Plaintiffs dismiss their claim for denial of medical care.

1 2 3 4 5 6 7 8	<p>kicked it away from him so that Corporal Pollick and Corporal McCarthy could start to provide medical aid.</p> <p>Stone Decl., ¶ 18; Pollick Depo. (Ex. “C”) at 49:10-21; McCarthy Depo. (Ex. “D”) at 70:16-19, 71:1-4; Moore Depo. (Ex. “E”) at 81:14-25, Olivas Depo. (Ex. “F”) at 52:14-18; Incident Audio (Ex. “J”) at 36:00-37:20.</p>	
9 10 11 12 13 14 15 16 17 18 19	<p>42. Corporal Pollick and Corporal McCarthy, who are certified EMTs, provided immediate medical aid to Perez, who was still breathing when they approached him.</p> <p>Gaytan Decl., ¶ 18; McCarthy Decl., ¶ 19; Olivas Decl., ¶ 19; Pollick Decl., ¶ 19; Moore Decl., ¶ 19; Stone Decl., ¶ 18; Pollick Depo. (Ex. “C”) at 45:10-14, 46:3-14, 17-20, 47:8-20; McCarthy Depo. (Ex. “D”) at 70:22-24, 71:3-4, 17-22; Olivas Depo. (Ex. “F”) at 57:12-17; Incident Audio (Ex. “J”) at 37:20-39:30.</p>	Undisputed. Plaintiffs dismiss their claim for denial of medical care.
20 21 22 23 24 25 26 27 28	<p>43. Victorville Fire Department and American Medical Response were staged in the area, and responded and provided medical treatment immediately after the scene was secured.</p> <p>Pollick Depo. (Ex. “C”) at 46:21-47:4; McCarthy Depo. (Ex. “D”) at 74:18-21, 75:1-17; Olivas Depo. (Ex. “F”) at 57:12-23.</p>	Undisputed. Plaintiffs dismiss their claim for denial of medical care.

1	44. Perez was transported to Victor	Undisputed. Plaintiffs dismiss their
2	Valley Global Medical Center for	claim for denial of medical care.
3	treatment.	
4	Pollick Depo. (Ex. "C") at 46:15-16.	
5	45. The deputies on the scene were not	Plaintiffs dispute this self-serving
6	able to give commands to Perez	statement.
7	before to lethal force encounter	
8	occurred as the situation was very	At the time of this incident, the
9	dynamic, uncertain, and rapidly-	Deputies were trained, pursuant to
10	evolving.	basic police training, that officers shall
11	Pollick Depo. (Ex. "C") at 26:9-16,	give a verbal warning before using
12	33:18-23; Moore Depo. (Ex. "E") at	deadly force, when feasible.
13	51:6-10	DeFoe Decl. at ¶ 5(d); Ex. 4 to Leap
14		Decl. ("McCarthy Depo.") at 21:14-17;
15		Ex. 3 to Leap Decl. ("Olivas Depo.") at
16		59:12-14; Ex. 1 to Leap Decl. ("Moore
17		Depo.") at 70:14-18.
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19	45. Moving Party's Response:	In this case, it would have been
20		feasible for the deputies to give Perez
21	The evidence cited by Plaintiffs does not dispute this fact, rather Plaintiffs present	a verbal warning prior to using deadly
22	additional unrelated and unsupported facts to manufacture a dispute of fact.	force, but they failed to do so. DeFoe
23	Plaintiffs' dispute to this fact is not material to Plaintiffs' claims and has no	Decl. at ¶ 9.
24	bearing on Defendants' liability in this action. Importantly, Scott DeFoe's	
25	declaration [Doc. 45-10] is inadmissible. <i>See</i> Defendants' Evidentiary Objections.	
26	Accordingly, Plaintiffs' dispute is not to the fact presented, and the evidence	
27	submitted does not create a dispute of fact. Thus, this fact is undisputed for the	
28	purpose of this Motion.	

1	46.San Bernardino County Sheriff's	Objection: Irrelevant.
2	Department Policy 3.608, The Use of	
3	Lethal Force, states that a deputy	When the Deputies fired their shots,
4	may use deadly force to protect	there was no immediate threat of death
5	himself or others from what he	or serious bodily injury.
6	reasonably believes to be a threat of	DeFoe Decl. at ¶ 13 (a-l).
7	death or serious bodily injury.	
8		At the time of all the shots, the
9	Pollick Depo. (Ex. "C") at 56:13-19;	deputies knew the firearm was on
10	Moore Depo. (Ex. "E") at 65:17-18,	the ground, behind the pool table.
11	22-24, 66:7-10, 14-18; Olivas Depo.	Ex. 1 to Leap Decl. ("Moore Depo.")
12	(Ex. "F") at 58:11-14; Use of Force	at 67:10-16; 67:23-24; 68:7-23; Ex. 2
13	Policy (Ex. M").	to Leap Decl. ("Pollick Depo") at
14		12:1518, 15:9-17, 22:15-18, 41:16-
15		42:11, Ex. 3 to Leap Decl. ("Olivas
16		Depo") at 17:16-18, 62:9-21; Ex. 4 to
17		Leap Decl. ("McCarthy Depo.") at
18		66:19-67:7, 69:6-13; Ex. 6 to Leap
19		Decl. ("Gaytan Depo.") at 37:9-16.
20		
21		When the shots started, the deputies
22		could see Mr. Perez's hands and
23		could see that there was nothing in
24		his hands. Ex. 4 to Leap Decl.
25		("McCarthy Depo.") at 41:13-25; Ex.
26		5 to Leap Decl. ("Stone Depo.") at
27		26:10-18; Ex. 6 to Leap Decl.
28		("Gaytan Depo.") at 29:10-15.
		The Deputies did not see Mr. Perez
		reach for the gun after he placed it on
		the ground, prior to the shooting. Ex.
		3 to Leap Decl. ("Olivas Depo.") at
		62:9-14; Ex. 5 ("Stone Depo.") at
		43:16, Ex. 6 to Leap Decl. ("Gaytan
		Depo.") at 37:9-16.
		Under the facts of this case, the

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Deputies could not justify shooting at Mr. Perez simply because Mr. Perez was running away.

DeFoe Decl. at ¶ 6, 8.

Mr. Perez was moving away from the Deputies during all of the shots. Ex. 1 to Leap Decl. (“Moore Depo.”) at 45:17-46:11; Ex. 2 to Leap Decl. (“Pollick Depo.”) at 27:2-11, 28:17-29:5, 43:8-11; Ex. 3 to Leap Decl. (“Olivas Depo.”) at 29:11-21, 32:18-21; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 59:7-11; 61:7-20.

The trajectories of the bullet wounds indicate that Mr. Perez was falling to the ground or on the ground when he was shot.

Declaration of Bennet Omalu, M.D. (“Omalu Decl.”) at ¶ 13(a-d, f-g, i).

Basic police training instructs, and the deputies were trained that they cannot shoot someone merely because they see a gun in that person’s hands. Ex. 1 to Leap Decl. (“Moore Depo.”) at 66:2-18; Ex. 3 to Leap Decl. (“Olivas Depo.”) at 60:16-21; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 12:19-21, 69:3-5.

46. Moving Party’s Response:

The evidence cited by Plaintiffs does not dispute this fact, rather Plaintiffs present additional unrelated and unsupported facts to manufacture a dispute of fact.

Importantly, Scott DeFoe’s declaration [Doc. 45-10] and Bennet Omalu M.D.’s declaration [Doc. 45-11] are inadmissible. *See* Defendants’ Evidentiary Objections. Further, Plaintiffs’ dispute to this fact is not material to Plaintiffs’ claims and has no bearing on Defendants’ liability in this action. Accordingly, Plaintiffs’ dispute is not to the fact presented, and the evidence submitted does not create a dispute of fact. Thus, this fact is undisputed for the purpose of this Motion.

47. Since the Sheriff’s academy, Corporal McCarthy, Deputy Olivas, Deputy Pollick, Deputy Moore, Deputy Stone, and Sergeant Gaytan have been trained in accordance with San Bernardino County Sheriff’s Department Policy 3.608, The Use of Lethal Force, that the use of lethal force is justified to protect themselves or others from what they reasonably believe to be an immediate threat of death or serious bodily injury.

Gaytan Decl., ¶ 17; McCarthy Decl., ¶ 18; Olivas Decl., ¶ 18; Pollick Decl., ¶ 18; Moore Decl., ¶ 18; Stone Decl., ¶ 17; McCarthy Depo. (Ex. “D”) at 13:6-16, 19:1-8; Use of Force Policy (Ex. M”).

Objection: Irrelevant.

When the Deputies fired their shots, there was no immediate threat of death or serious bodily injury. DeFoe Decl. at ¶ 13 (a-l).

At the time of all the shots, the deputies knew the firearm was on the ground, behind the pool table. Ex. 1 to Leap Decl. (“Moore Depo.”) at 67:10-16; 67:23-24; 68:7-23; Ex. 2 to Leap Decl. (“Pollick Depo.”) at 12:1518, 15:9-17, 22:15-18, 41:16-42:11, Ex. 3 to Leap Decl. (“Olivas Depo.”) at 17:16-18, 62:9-21; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 66:19-67:7, 69:6-13; Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 37:9-16.

When the shots started, the deputies could see Mr. Perez’s hands and could see that there was nothing in his hands. Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 41:13-25; Ex. 5 to Leap Decl. (“Stone Depo.”) at 26:10-18; Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 29:10-15.

The Deputies did not see Mr. Perez reach for the gun after he placed it on the ground, prior to the shooting.

Ex. 3 to Leap Decl. (“Olivas Depo.”) at 62:9-14; Ex. 5 (“Stone Depo.”) at 43:16, Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 37:9-16.

Under the facts of this case, the Deputies could not justify shooting at Mr. Perez simply because Mr. Perez was running away.

DeFoe Decl. at ¶ 6, 8.

Mr. Perez was moving away from the Deputies during all of the shots. Ex. 1 to Leap Decl. (“Moore Depo.”) at 45:17-46:11; Ex. 2 to Leap Decl. (“Pollick Depo.”) at 27:2-11, 28:17-29:5, 43:8-11; Ex. 3 to Leap Decl. (“Olivas Depo.”) at 29:11-21, 32:18-21; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 59:7-11; 61:7-20.

The trajectories of the bullet wounds indicate that Mr. Perez was falling to the ground or on the ground when he was shot.

Declaration of Bennet Omalu, M.D. (“Omalu Decl.”) at ¶ 13(a-d, f-g, i).

Basic police training instructs, and the deputies were trained that they cannot shoot someone merely because they see a gun in that

	person's hands. Ex. 1 to Leap Decl. ("Moore Depo.") at 66:2-18; Ex. 3 to Leap Decl. ("Olivas Depo.") at 60:16-21; Ex. 4 to Leap Decl. ("McCarthy Depo.") at 12:19-21, 69:3-5.
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47. Moving Party's Response:

Further, the evidence cited by Plaintiffs does not dispute this fact, rather Plaintiffs present additional unrelated and unsupported facts to manufacture a dispute of fact. Importantly, Scott DeFoe's declaration [Doc. 45-10] and Bennet Omalu M.D.'s declaration [Doc. 45-11] are inadmissible. *See* Defendants' Evidentiary Objections. Further, Plaintiffs' dispute to this fact is not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action. Accordingly, Plaintiffs' dispute is not to the fact presented, and the evidence submitted does not create a dispute of fact. Thus, this fact is undisputed for the purpose of this Motion.

PLAINTIFFS' ADDITIONAL MATERIAL FACTS	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE
Background of the Shooting	
<p>48. Prior to the shooting, Deputy Moore, Deputy Pollick, Deputy Olivas, and Corporal McCarthy ("the deputies") had information that Mr. Perez was mentally ill or experiencing a mental health crisis and was "possibly 5150."</p> <p>Deposition of Andrew Pollick, ("Pollick Depo.") attached to Leap Decl. as "Exhibit 2," at 16:8-13.</p>	<p>Disputed.</p> <p>The evidence cited does not support the fact asserted. Rather, Corporal Pollick stated there was a discussion that Perez might be 5150. Pollick Depo. attached to Leap Decl. as "Exhibit 2," at 16:8-13.</p> <p>Rather, the evidence shows that Sergeant Gaytan told members of the SED Team that there was a subject that had threatened a female with a firearm, and the subject was still armed and barricaded in the garage of a multi-unit complex where he did not</p>

	<p>live. <i>See</i> Gaytan Decl., ¶ 2; McCarthy Decl., ¶ 2; Olivas Decl., ¶ 2; Pollick Decl., ¶ 2; Moore Decl., ¶ 2; Stone Decl., ¶ 2; McCarthy Depo. (Ex. “D”) at 9:4-10. 24:1-6.</p> <p>Further, the SED Team learned that Perez was kind of nodding off, he was kind of lucid, and that it was unclear if he was under the influence of any narcotics or alcohol. <i>See</i> Gaytan Decl., ¶ 14; McCarthy Decl., ¶ 15; Olivas Decl., ¶ 15; Pollick Decl., ¶ 15; Moore Decl., ¶ 15; Stone Decl., ¶ 14.</p> <p>Importantly, Plaintiff presented no evidence that Perez was mentally ill or experiencing a mental health crisis and was “possibly 5150.”</p>
<p>49. Prior to the shooting, the Deputies had no specific information that Mr. Perez verbally threatened to injure anyone.</p> <p>Ex. 2 to Leap Decl. (“Pollick Depo.”) at 61:13-62:6; Deposition of Anthony Alcala (“Alcala Depo.”) attached as “Exhibit 7” to Leap Decl., at 20:22-25, Deposition of Helen Fregoso (“Fregoso Depo.”) attached as “Exhibit 8” to Leap Decl. at 46:19-50:5.</p>	<p>Disputed.</p> <p>Importantly, the reporting party, Helen Fregoso, reported her daughter’s friend, Albert Perez (“Perez”), was in the garage, causing a disturbance, and that he had a gun in his front right pocket. <i>See</i> Call Log History (Ex. “A”) at pg. 1; Fregoso Depo. (Ex. “B”) at 32:5-17, 22-25, 33:1-3.</p> <p>Further, Sergeant Gaytan (“Sergeant Gaytan”) told members of the SED Team to respond to Zenda Street in Victorville for a barricade situation <i>where the subject had threatened a female with a firearm</i>, and the subject was still armed and barricaded in the garage of a multi-unit complex where he did not live. <i>See</i> Gaytan Decl., ¶ 2; McCarthy Decl., ¶ 2; Olivas Decl., ¶ 2;</p>

1		Pollick Decl., ¶ 2; Moore Decl., ¶ 2; Stone Decl., ¶ 2; McCarthy Depo. (Ex. “D”) at 9:4-10. 24:1-6.
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4		Further, the evidence cited does not support the fact asserted.
5	50. At the time of the incident, the	Disputed.
6	Deputies had no information that Mr.	
7	Perez had committed an act of	Importantly, the reporting party, Helen
8	violence against another person.	Fregoso, reported her daughter’s
9		friend, Albert Perez (“Perez”), was in
10	Deposition of Christina Olivas	the garage, causing a disturbance, and
11	(“Olivas Depo.”) attached as Ex. 3 to	that he had a gun in his front right
12	Leap Decl. at 48:10-20; Deposition	pocket. <i>See</i> Call Log History (Ex.
13	of Luke Gaytan (“Gaytan Depo.”),	“A”) at pg. 1; Fregoso Depo. (Ex.
14	attached as Ex. 6 to Leap Decl. at	“B”) at 32:5-17, 22-25, 33:1-3.
15	10:14-22.	
16		Further, Sergeant Gaytan (“Sergeant
17		Gaytan”) told members of the SED
18		Team to respond to Zenda Street in
19		Victorville for a barricade situation
20		<i>where the subject had threatened a</i>
21		<i>female with a firearm</i> , and the subject
22		was still armed and barricaded in the
23		garage of a multi-unit complex where
24	51. At the time of the incident, the	he did not live. <i>See</i> Gaytan Decl., ¶ 2;
25	Deputies had no information that Mr.	McCarthy Decl., ¶ 2; Olivas Decl., ¶ 2;
26	Perez committed a felony involving	Pollick Decl., ¶ 2; Moore Decl., ¶ 2;
27	the infliction of injury or death.	Stone Decl., ¶ 2; McCarthy Depo. (Ex.
28		“D”) at 9:4-10. 24:1-6.
		Further, the evidence cited does not support the fact asserted.
	Ex. 6 to Leap Decl. (“Gaytan	Undisputed. However, not material to
	Depo.”), at 49:16-50:6; Deposition of	Plaintiffs’ claims and has no bearing
		on Defendants’ liability in this action.
		Importantly, the reporting party, Helen
		Fregoso, reported her daughter’s
		friend, Albert Perez (“Perez”), was in

1 2 3 4 5 6 7 8 9 10 11 12 13	David Moore (“Moore Depo.”), attached as Exhibit 1 to Leap Decl. at 22:6-14.	the garage, causing a disturbance, and that he had a gun in his front right pocket. <i>See</i> Call Log History (Ex. “A”) at pg. 1; Fregoso Depo. (Ex. “B”) at 32:5-17, 22-25, 33:1-3. Further, Sergeant Gaytan (“Sergeant Gaytan”) told members of the SED Team to respond to Zenda Street in Victorville for a barricade situation <i>where the subject had threatened a female with a firearm</i> , and the subject was still armed and barricaded in the garage of a multi-unit complex where he did not live. <i>See</i> Gaytan Decl., ¶ 2; McCarthy Decl., ¶ 2; Olivas Decl., ¶ 2; Pollick Decl., ¶ 2; Moore Decl., ¶ 2; Stone Decl., ¶ 2; McCarthy Depo. (Ex. “D”) at 9:4-10. 24:1-6.
14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	52. At the time of the incident, the Deputies had no information that Mr. Perez had injured another person. Ex. 1 to Leap Decl. (“Moore Depo.”) at 22:6-14; Ex. 3 to Leap Decl. (“Olivas Depo.”) at 47:3-6.	Undisputed. However, not material to Plaintiffs’ claims and has no bearing on Defendants’ liability in this action. Importantly, the reporting party, Helen Fregoso, reported her daughter’s friend, Albert Perez (“Perez”), was in the garage, causing a disturbance, and that he had a gun in his front right pocket. <i>See</i> Call Log History (Ex. “A”) at pg. 1; Fregoso Depo. (Ex. “B”) at 32:5-17, 22-25, 33:1-3. Further, Sergeant Gaytan (“Sergeant Gaytan”) told members of the SED Team to respond to Zenda Street in Victorville for a barricade situation <i>where the subject had threatened a female with a firearm</i> , and the subject was still armed and barricaded in the garage of a multi-unit complex where he did not live. <i>See</i> Gaytan Decl., ¶ 2;

1		McCarthy Decl., ¶ 2; Olivas Decl., ¶ 2; Pollick Decl., ¶ 2; Moore Decl., ¶ 2; Stone Decl., ¶ 2; McCarthy Depo. (Ex. “D”) at 9:4-10. 24:1-6.
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4	53. At the time of the shooting, the	Disputed. However, not material to Plaintiffs’ claims and has no bearing on Defendants’ liability in this action.
5	Deputies had no information that Mr. Perez was under the influence of any	
6	illegal substances.	
7		The SED Team learned that Perez was kind of nodding off, he was kind of
8	Deposition of Cory McCarthy	lucid, and that it was unclear if he was
9	(“McCarthy Depo.”) attached to Leap	under the influence of any narcotics or
10	Decl. as “Exhibit 4,” at 25:13-18; Ex. 1 to Leap Decl. (“Moore Depo.”) at	alcohol. <i>See</i> Gaytan Decl., ¶ 14;
11	13:8-14; Ex. 7 to Leap Decl. (“Alcala Depo.”) at 20:16-21.	McCarthy Decl., ¶ 15; Olivas Decl., ¶ 15; Pollick Decl., ¶ 15; Moore Decl., ¶ 15; Stone Decl., ¶ 14.
12	54. Mr. Perez never pointed the firearm	Disputed.
13	at anyone, including the reporting	
14	party.	Importantly, the reporting party, Helen Fregoso, reported her daughter’s
15		friend, Albert Perez (“Perez”), was in
16	Ex. 1 to Leap Decl. (“Moore Depo.”) at 22:11-14, 66:20-24; Ex. 2 to Leap	the garage, causing a disturbance, and
17	Decl. (“Pollick Depo.”) at 15:18-23; Ex. 4 to Leap Decl. (“McCarthy	that he had a gun in his front right
18	Depo.”) at 66:19-67:7; Deposition of Joshua Stone (“Stone Depo.”)	pocket. <i>See</i> Call Log History (Ex. “A”) at pg. 1; Fregoso Depo. (Ex. “B”) at 32:5-17, 22-25, 33:1-3.
19	attached to Leap Decl. as Exhibit 5,	
20	at 47:10-15; Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 9:15-25, 10:14-22;	Further, Sergeant Gaytan (“Sergeant Gaytan”) told members of the SED Team to respond to Zenda Street in
21	Ex. 7 to Leap Decl. (“Alcala Depo.”) at 27:4-13; 32:7-23; Ex. 8 to Leap Decl. (“Fregoso Depo.”) at	Victorville for a barricade situation
22	46:19-50:5.	<i>where the subject had threatened a female with a firearm</i> , and the subject was still armed and barricaded in the
23		garage of a multi-unit complex where he did not live. <i>See</i> Gaytan Decl., ¶ 2; McCarthy Decl., ¶ 2; Olivas Decl., ¶ 2; Pollick Decl., ¶ 2; Moore Decl., ¶ 2; Stone Decl., ¶ 2; McCarthy Depo. (Ex. “D”) at 9:4-10. 24:1-6.
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1		Lastly, the evidence cited does not support the fact asserted.
2	55.Mr. Perez never fired any shots from	Undisputed. However, not material to
3	the gun.	Plaintiffs' claims and has no bearing
4		on Defendants' liability in this action.
5	Ex. 2 to Leap Decl. ("Pollick Depo.")	
6	at 15:18-16:6; 32:19-20; Ex. 4 to	
7	Leap Decl. ("McCarthy Depo.") at	
8	66:19-17:7; Ex. 5 to Leap Decl.	
9	("Stone Depo.") at 56:5-14.	
10	56.Mr. Perez never threatened to fire the	Disputed.
11	gun.	
12	Ex. 1 to Leap Decl. ("Moore Depo.")	Importantly, the reporting party, Helen
13	at 22:11-24, 66:20-24; Ex. 2 to Leap	Fregoso, reported her daughter's
14	Decl. ("Pollick Depo.") at 15:9-	friend, Albert Perez ("Perez"), was in
15	16:24, 61:13-62:6; Ex. 4 to Leap	the garage, causing a disturbance, and
16	Decl. ("McCarthy Depo.") at 66:19-	that he had a gun in his front right
17	67:7; Ex. 5 to Leap Decl. ("Stone	pocket. <i>See</i> Call Log History (Ex.
18	Depo.") at 24:7-16, 47:1015; Ex. 6 to	"A") at pg. 1; Fregoso Depo. (Ex.
19	Leap Decl. ("Gaytan Depo.") at 9:15-	"B") at 32:5-17, 22-25, 33:1-3.
20	25, 10:14-22; Ex. 7 to Leap Decl.	
21	("Alcala Depo.") at 20:22-25, 27:4-	Further, Sergeant Gaytan ("Sergeant
22	13; 32:7-23; Ex. 8 Leap Decl.	Gaytan") told members of the SED
23	("Fregoso Depo.") at 46:19-50:5.	Team to respond to Zenda Street in
24		Victorville for a barricade situation
25	57.At no point while Mr. Perez's finger	<i>where the subject had threatened a</i>
26	was on the trigger of the gun did any	<i>female with a firearm</i> , and the subject
27	of the Deputies use force on Mr.	was still armed and barricaded in the
28	Perez.	garage of a multi-unit complex where
		he did not live. <i>See</i> Gaytan Decl., ¶ 2;
		McCarthy Decl., ¶ 2; Olivas Decl., ¶ 2;
		Pollick Decl., ¶ 2; Moore Decl., ¶ 2;
		Stone Decl., ¶ 2; McCarthy Depo. (Ex.
		"D") at 9:4-10. 24:1-6.
		Undisputed. However, not material to
		Plaintiffs' claims and has no bearing
		on Defendants' liability in this action.

1	Ex. 5 to Leap Decl. (“Stone Depo.”) at 47:23-48:9.	
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3	58. When Mr. Perez was holding the gun when he sat on the stool, he never 4 raised the gun.	Undisputed. However, not material to Plaintiffs’ claims and has no bearing on Defendants’ liability in this action.
5	Ex. 1 to Leap Decl. (“Moore Depo.”) 6 at 22:11-14, 66:20-24; Ex. 2 to Leap 7 Decl. (“Pollick Depo.”) at 15:18-23; 8 Ex. 4 to Leap Decl. (“McCarthy 9 Depo.”) at 66:19-67:7; Ex. 5 to Leap 10 Decl. (“Stone Depo.”) at 24:7-16, 47:10-15; Ex. 6 to Leap Decl. 11 (“Gaytan Depo.”) at 9:15-25, 10:14- 12 22; Ex. 7 to Leap Decl. (“Alcala Depo.”) at 27:4-13; 32:7-23	
13	59. Deputy Alcala instructed Mr. Perez 14 to put the firearm on the ground, and 15 Mr. Perez complied with that 16 command by placing the firearm on 17 the ground between the stool on 18 which he was sitting and the pool table.	Undisputed.
19	Ex. 7 to Leap Decl. (“Alcala Depo.”) 20 at 32:2, 34-33:19; Ex. 1 to Leap Decl. 21 (“Moore Depo.”) at 16:5-17, Ex. 3 to 22 Leap Decl. (“Pollick Depo.”) at 12:15-18; Ex. 6 to Leap Decl. 23 (“Gaytan Depo.”) at 20:25-21:7; Ex. 24 4 to Leap Decl. (“McCarthy Depo.”) at 39:3-18.	
25	60. At the time Mr. Perez put the firearm 26 on the ground, Deputy Moore, 27 Deputy Pollick, and Corporal 28 McCarthy could see the firearm on the ground from their vantage points.	Undisputed. However, not material to Plaintiffs’ claims and has no bearing on Defendants’ liability in this action.

1	Ex. 1 to Leap Decl. (“Moore Depo.”)	
2	at 16:5-12; Ex. 2 to Leap Decl.	
3	(“Pollick Depo.”) at 12:9-18; Ex. 4 to	
4	Leap Decl. (“McCarthy Depo.”) at	
5	39:3-13.	
6	61. Prior to the shooting, Deputy Pollick	Undisputed. However, not material to
7	communicated to all deputies on	Plaintiffs’ claims and has no bearing
8	scene that Mr. Perez had put the	on Defendants’ liability in this action.
9	firearm on the ground.	
10	Ex. 2 to Leap Decl. (“Pollick	
11	Depo.”), at 15:9-17’ Ex. 6 to Leap	
12	Decl. (“Gaytan Depo.”) at 17:21-23.	
13	62. Deputy Alcala instructed Mr. Perez	Undisputed.
14	to stand up from the stool, and Mr.	
15	Perez complied by standing up from	
16	the stool.	
17	Ex. 7 to Leap Decl. (“Alcala Depo.”)	
18	at 35:12-20.	
19	63. Deputy Alcala then instructed Mr.	Undisputed.
20	Perez to walk toward the deputies,	
21	and Mr. Perez complied by slowly	
22	walking toward the deputies.	
23	Ex. 1 to Leap Decl. (“Moore Depo.”)	
24	at 14:12-15-8; Ex. 7 to Leap Decl.	
25	(“Alcala Depo.”) at 41:18-25, 42:10-	
26	13; Ex. 4 to Leap Decl. (“McCarthy	
27	Depo.”) at 41:13-42:2; Ex. 6 to Leap	
28	Decl. (“Gaytan Depo.”) at 20:20-	
	21:7; Ex. 7 to Leap Decl. (“Alcala	
	Depo.”) at 41:18-25.	
	64. Sergeant Gaytan instructed Mr. Perez	Undisputed.
	to stop when Mr. Perez reached the	
	southwest corner of the pool table,	

1	and Mr. Perez complied by stopping	
2	at the corner of the pool table.	
3	Ex. 6 to Leap Decl. (“Gaytan Depo.”)	
4	at 20:20-21:7; Ex. 4 to Leap Decl.	
5	(“McCarthy Depo.”) at 41:13-42:2;	
6	Ex. 6 to Leap Decl. (“Gaytan Depo.”)	
7	at 20:20-21:7; Ex. 7 to Leap Decl.	
8	(“Alcala Depo.”) at 47:11-15.	
9	65.The deputies considered all four of	Undisputed. However, not material to
10	these acts of compliance by Mr.	Plaintiffs’ claims and has no bearing
11	Perez.	on Defendants’ liability in this action.
12	Ex. 4 to Leap Decl. (“McCarthy	
13	Depo.”) at 39:3-18, 41:13-42:2; Ex.	
14	6 to Leap Decl. (“Gaytan Depo.”) at	
15	20:20-21:7; Ex. 7 to Leap Decl.	
16	(“Alcala Depo.”) at 33:17-19, 35:12-	
17	20, 41:18-25, 47:11-15.	
18	66.When Mr. Perez stopped at the	Undisputed.
19	southwest corner of the pool table, he	
20	was at least 7-13 feet from the	
21	firearm.	
22	Ex. 1 to Leap Decl. (“Moore Depo.”)	
23	at 39:24-40:9; Ex. 2 to Leap Decl.	
24	(“Pollick Depo.”) at 19:22-20:4; Ex.	
25	4 to Leap Decl. (“McCarthy Depo.”)	
26	at 47:1-5; Ex.	
27	7 (“Alcala Depo.”) at 46:11-20.	
28	67.When Mr. Perez stopped at the	Undisputed.
	southwest corner of the pool table, he	
	was approximately 5-7 feet from the	
	deputies.	
	Ex. 1 to Leap Decl. (“Moore Depo.”)	
	at 39:24-40:9; Ex. 2 to Leap Decl.	

1	(“Pollick Depo.”) at 19:22-20:4; Ex.	
2	7 (“Alcala Depo.”) at 46:11-20.	
3	68. When Mr. Perez stopped at the end of	Undisputed.
4	the pool table, the deputies could see	
5	that his hands were visibly empty.	
6	Ex. 4 to Leap Decl. (“McCarthy	
7	Depo.”) at 41:13-25. Ex. 5 to Leap	
8	Decl. (“Stone Depo.”) at 26:10-18;	
9	Ex. 6 to Leap Decl. (“Gaytan Depo.”)	
10	at 29:10-15.	
11	69. Sergeant Gaytan then instructed Mr.	Disputed as to the timeline of events.
12	Perez to turn around and get on his	Undisputed that Sergeant Gaytan then
13	knees.	instructed Mr. Perez to turn around and
14		get on his knees.
15	Belt Recording of Sergeant Luke	
16	Gaytan (“Incident Audio”) attached	First, Sergeant Gaytan communicated
17	to Declaration of Kayleigh Anderson	to Perez that the deputies were going
18	(“Anderson Decl.”) as Exhibit J at	to have to take him into custody, which
19	30:29-30:59; Ex. 7 to Leap Decl.	appeared to the deputies to frustrate
20	(“Alcala Depo.”) at 52:9-14.	Perez, and lead the deputies to believe
21		that Perez was no longer cooperating.
22		See Moore Depo. (Ex. “E”) at 21:22-
23		22:1, 41:10-16; Olivas Depo. (Ex. “F”)
24		at 19:24-20:7, 49:3-25; Stone Depo.
25		(Ex. “G”) at 48:16-18; Gaytan Depo.
26		(Ex. “I”) at 40:5-13, 23-25, 41:1-19;
27		Incident Audio (Ex. “J”) at 28:00-
28		31:50.
		Then, for a few minutes, while
		Sergeant Gaytan continued to talk to
		Perez to have him peacefully
		surrender, Perez stood parallel to the
		middle of the pool table,
		approximately eight feet north of the
		garage opening and approximately
		eight feet away from the gun’s
		location, Perez then put his hands up

1		and shook his head back and forth, with an irritated and frustrated look, without making eye contact with anyone. <i>See</i> Pollick Depo. (Ex. “C”) at 13:7-19; McCarthy Depo. (Ex. “D”) at 47:1-12, 53:3-7; Moore Depo. (Ex. “E”) at 14:18-21, 21:22-22:1, 39:24-25, 40:1, 8-9, 24-25, 41:1-3, 10-16; Stone Depo. (Ex. “G”) at 31:8-10; Gaytan Depo. (Ex. “I”) at 31:5-14, 40:23-41:19; Incident Audio (Ex. “J”) at 28:00-31:50; Garage Photos (Ex. “L”).
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10	70. After Sergeant Gaytan instructed Mr. Perez to turn around and get on his knees, Mr. Perez took an approximately half-foot step back with his left foot and began to turn to his left.	Undisputed.
11		However, when Sergeant Gaytan communicated to Perez that the deputies were going to have to take him into custody, which appeared to the deputies to frustrate Perez, and lead the deputies to believe that Perez was no longer cooperating. <i>See</i> Moore Depo. (Ex. “E”) at 21:22-22:1, 41:10-16; Olivas Depo. (Ex. “F”) at 19:24-20:7, 49:3-25; Stone Depo. (Ex. “G”) at 48:16-18; Gaytan Depo. (Ex. “I”) at 40:5-13, 23-25, 41:1-19; Incident Audio (Ex. “J”) at 28:00-31:50.
12	Ex. 1 to Leap Decl. (“Moore Depo.”) at 41:4-9, 55:1-3; Ex. 2 to Leap Decl. (“Pollick Depo.”) at 20:19-24.	
13		Then, for a few minutes, while Sergeant Gaytan continued to talk to Perez to have him peacefully surrender, Perez stood parallel to the middle of the pool table, approximately eight feet north of the garage opening and approximately eight feet away from the gun’s location, Perez then put his hands up and shook his head back and forth, with an irritated and frustrated look, without making eye contact with
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	<p>anyone. <i>See</i> Pollick Depo. (Ex. “C”) at 13:7-19; McCarthy Depo. (Ex. “D”) at 47:1-12, 53:3-7; Moore Depo. (Ex. “E”) at 14:18-21, 21:22-22:1, 39:24-25, 40:1, 8-9, 24-25, 41:1-3, 10-16; Stone Depo. (Ex. “G”) at 31:8-10; Gaytan Depo. (Ex. “I”) at 31:5-14, 40:23-41:19; Incident Audio (Ex. “J”) at 28:00-31:50; Garage Photos (Ex. “L”).</p>
Less-Lethal Preceding the Shooting	
<p>71. Before Mr. Perez took the step back with his left foot following Sergeant Gaytan’s commands, Deputy Stone fired a 40 millimeter blunt impact projectile (“BIP”) less lethal round at Mr. Perez.</p> <p>Ex. 5 to Leap Decl. (“Stone Depo.”) at 26:22-27:3; Ex. 1 to Leap Decl. (“Moore Depo.”) at 41:4-9, 55:1-3; Ex. 2 to Leap Decl. (“Pollick Depo.”) at 20:19-24.</p>	<p>Disputed.</p> <p><i>After Perez stepped back</i>, Deputy Stone deployed a less-lethal 40-millimeter round, as was discussed in the SED Teams planning briefing, which hit Perez somewhere between his waist and the top of his shoulders. <i>See</i> Pollick Depo. (Ex. “C”) at 20:25-21:8; McCarthy Depo. (Ex. “D”) at 52:25-53:12, 70:2-9; Moore Depo. (Ex. “E”) at 34:23-35:17, 36:8-14, 41:20-22, 54:10-15; Olivas Depo. (Ex. “F”) at 21:16-22:9, 50:1-3; Stone Depo. (Ex. “G”) at 27:4-28:4, 8-25, 29:1-8, 12-17, 46:11-18, 48:19-49:6; Gaytan Depo. (Ex. “I”) at 28:18-29:9; Incident Audio (Ex. “J”) at 31:49-31:57.</p> <p>Specifically, Sergeant Gaytan made it clear to the SED Team that if the suspect was to separate himself from the firearm, the team could not allow him to gain access back to that firearm because we did not want him to be able to shoot at us or any members of the public. <i>See</i> Gaytan Decl., ¶ 12; McCarthy Decl., ¶ 12; Olivas Decl., ¶</p>

1		12; Pollick Decl., ¶ 12; Moore Decl., ¶ 12; Stone Decl., ¶ 12; Pollick Depo. (Ex. “C”) at 6:25-7:7; McCarthy Depo. (Ex. “D”) at 45:19-46:2, 76:2-8; Moore Depo. (Ex. “E”) at 29:15-30:1; Olivas Depo. (Ex. “F”) at 20:18-21:2; Stone Depo. (Ex. “G”) at 28:19-29:8.
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6	72. Deputy Stone perceived that his BIP	Undisputed. However, not material to
7	struck Mr. Perez on the right side of	Plaintiffs’ claims and has no bearing
8	his torso.	on Defendants’ liability in this action.
9	Ex. 5 to Leap Decl. (“Stone Depo.”)	
10	at 28:15-18.	
11	73. Deputy Stone deployed two	Undisputed. However, not material to
12	additional BIP rounds.	Plaintiffs’ claims and has no bearing
13	Ex. 5 to Leap Decl. (“Stone Depo.”)	on Defendants’ liability in this action.
14	at 32:11-33:10.	
15	74. Sergeant Gaytan also deployed one	Undisputed. However, not material to
16	BIP round, striking Mr. Perez in his	Plaintiffs’ claims and has no bearing
17	back.	on Defendants’ liability in this action
18	Ex. 6 to Leap Decl. (“Gaytan Depo.”)	
19	at 34:13-18.	
20	75. Mr. Perez was struck by two or three	Undisputed. However, not material to
21	40 millimeter “BIP” rounds within a	Plaintiffs’ claims and has no bearing
22	1-2 second timeframe.	on Defendants’ liability in this action.
23	Ex. J to Anderson Decl. (“Incident	
24	Audio”) at 31:39-31:50.	
25	76. Mr. Perez flinched in reaction to	Undisputed. However, not material to
26	being struck by the BIP rounds.	Plaintiffs’ claims and has no bearing
27	Ex. 2 to Leap Decl. (“Pollick Depo.”)	on Defendants’ liability in this action.
28	at 22:19-23:3; Ex. 3 to Leap Decl.	

1	(“Olivas Depo.”) at 22:6-9; Ex. 4 to	
2	Leap Decl. (“McCarthy Depo.”) at	
3	55:17-23.	
4	77.Mr. Perez was not advancing or	Undisputed. However, not material to
5	charging at any person, including any	Plaintiffs’ claims and has no bearing
6	deputies when Deputy Stone and	on Defendants’ liability in this action.
7	Sergeant Gaytan fired their BIP	
8	rounds.	Importantly, the evidence cited does
9		not support the fact asserted.
10	Ex. 3 to Leap Decl. (“Olivas Depo.”)	
11	at 22:21-23; Ex. 5 (“Stone Depo”) at	Further, the evidence shows that the
12	26:22-11).	less-lethal rounds were ineffective in
13		gaining Perez’ compliance, and in
14		response to Perez accelerating toward
15		the back of the pool table where the
16		gun was located, Corporal Cory
17		McCarthy, Deputy Olivas, Deputy
18		Pollick, and Deputy Moore each fired
19		lethal rounds, at Perez in order to stop
20		the immediate threat they perceived
21		from Perez’ actions. <i>See</i> Pollick Depo.
22		(Ex. “C”) at 30:6-18, 22-25, 31:2-12,
23		55:22-56:1, 20-22; McCarthy Depo.
24		(Ex. “D”) at 59:4-11; 60:14-24; 63:19-
25		22; 65:13-18; Moore Depo. (Ex. “E”)
26		at 43:1-8, 11-19, 64:19-25; Olivas
27		Depo. (Ex. “F”) at 24:13-15; Incident
28		Audio (Ex. “J”) at 31:49-31:57.
29	78.Deputy Stone and Sergeant Gaytan	Undisputed. However, not material to
30	observed that Mr. Perez’s hands were	Plaintiffs’ claims and has no bearing
31	empty at the time they deployed their	on Defendants’ liability in this action.
32	BIP rounds.	
33		The evidence shows that the less-lethal
34	Ex. 5 to Leap Decl. (“Stone	rounds were ineffective in gaining
35	Depo.”) at 26:10-18; Ex. 6 to Leap	Perez’ compliance, and <i>in response to</i>
36	Decl. (“Gaytan Depo.”) at 29:1015.	<i>Perez accelerating toward the back of</i>
37		<i>the pool table where the gun was</i>
38		<i>located</i> , Corporal Cory McCarthy,
39		Deputy Olivas, Deputy Pollick, and
40		Deputy Moore each fired lethal rounds,

	<p>at Perez in order to stop the immediate threat they perceived from Perez' actions. <i>See</i> Pollick Depo. (Ex. "C") at 30:6-18, 22-25, 31:2-12, 55:22-56:1, 20-22; McCarthy Depo. (Ex. "D") at 59:4-11; 60:14-24; 63:19-22; 65:13-18; Moore Depo. (Ex. "E") at 43:1-8, 11-19, 64:19-25; Olivas Depo. (Ex. "F") at 24:13-15; Incident Audio (Ex. "J") at 31:49-31:57.</p>
<p>79. Mr. Perez was unarmed when he was struck by the BIP rounds.</p> <p>Ex. 4 to Leap Decl. ("McCarthy Depo.") at 57:12-14; Ex. 5 to Leap Decl. ("Stone Depo.") at 26:10-18, 30:11-24; Ex. 6 to Leap Decl. ("Gaytan Depo.") at 29:10-15.</p>	<p>Undisputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.</p> <p>The evidence shows that the less-lethal rounds were ineffective in gaining Perez' compliance, and <i>in response to Perez accelerating toward the back of the pool table where the gun was located</i>, Corporal Cory McCarthy, Deputy Olivas, Deputy Pollick, and Deputy Moore each fired lethal rounds, at Perez in order to stop the immediate threat they perceived from Perez' actions. <i>See</i> Pollick Depo. (Ex. "C") at 30:6-18, 22-25, 31:2-12, 55:22-56:1, 20-22; McCarthy Depo. (Ex. "D") at 59:4-11; 60:14-24; 63:19-22; 65:13-18; Moore Depo. (Ex. "E") at 43:1-8, 11-19, 64:19-25; Olivas Depo. (Ex. "F") at 24:13-15; Incident Audio (Ex. "J") at 31:49-31:57.</p>
<p>80. At the time of the second BIP round, Mr. Perez was moving away from the first BIP round and away from the deputies.</p> <p>Ex. J to Anderson Decl. ("Incident Audio") at 30:25-31:05; Ex. 3 to Leap Decl. ("Olivas Depo.") at Ex. 7</p>	<p>Undisputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.</p> <p>The evidence shows that the less-lethal rounds were ineffective in gaining Perez' compliance, and <i>in response to Perez accelerating toward the back of the pool table where the gun was</i></p>

1 2 3 4 5 6 7 8 9	to Leap Decl. (“Alcala Depo.”) at 52:9-14; Ex. 5 to Leap Decl. (“Stone Depo.”) at 31:25-33:10.	located , Corporal Cory McCarthy, Deputy Olivas, Deputy Pollick, and Deputy Moore each fired lethal rounds, at Perez in order to stop the immediate threat they perceived from Perez’ actions. <i>See</i> Pollick Depo. (Ex. “C”) at 30:6-18, 22-25, 31:2-12, 55:22-56:1, 20-22; McCarthy Depo. (Ex. “D”) at 59:4-11; 60:14-24; 63:19-22; 65:13-18; Moore Depo. (Ex. “E”) at 43:1-8, 11-19, 64:19-25; Olivas Depo. (Ex. “F”) at 24:13-15; Incident Audio (Ex. “J”) at 31:49-31:57.
10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	81. Mr. Perez was approximately 6-8 feet from the firearm at the time he was struck by the first BIP round. Ex. 5 to Leap Decl. (“Stone Depo.”) at 31:6-10.	Undisputed. However, not material to Plaintiffs’ claims and has no bearing on Defendants’ liability in this action. The evidence shows that the less-lethal rounds were ineffective in gaining Perez’ compliance, and <i>in response to Perez accelerating toward the back of the pool table where the gun was located</i> , Corporal Cory McCarthy, Deputy Olivas, Deputy Pollick, and Deputy Moore each fired lethal rounds, at Perez in order to stop the immediate threat they perceived from Perez’ actions. <i>See</i> Pollick Depo. (Ex. “C”) at 30:6-18, 22-25, 31:2-12, 55:22-56:1, 20-22; McCarthy Depo. (Ex. “D”) at 59:4-11; 60:14-24; 63:19-22; 65:13-18; Moore Depo. (Ex. “E”) at 43:1-8, 11-19, 64:19-25; Olivas Depo. (Ex. “F”) at 24:13-15; Incident Audio (Ex. “J”) at 31:49-31:57.
25 26 27 28	82. Based on police training, a BIP round can cause injury. Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 17:15-21.	Undisputed. However, not material to Plaintiffs’ claims and has no bearing on Defendants’ liability in this action.

1 2 3 4 5	83.BIP rounds have a recognizably different sound than lethal rounds. Ex. 5 to Leap Decl. (“Stone Depo.”) at 54:4-19; Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 35:2536:4.	Undisputed. However, not material to Plaintiffs’ claims and has no bearing on Defendants’ liability in this action.
6 7 8 9 10 11 12 13	84.No deputy issued a verbal warning to Mr. Perez that they would deploy less lethal munitions against him prior to deploying less lethal munitions. Ex. 5 to Leap Decl. (“Stone Depo.”) at 38:5-7; Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 36:1921; Ex. J to Anderson Decl. (“Incident Audio”) at 31:30-31:51.	Undisputed. However, not material to Plaintiffs’ claims and has no bearing on Defendants’ liability in this action. The evidence shows that the deputies on the scene were not able to give commands to Perez before to lethal force encounter occurred as the situation was very dynamic, uncertain, and rapidly-evolving. <i>See</i> Pollick Depo. (Ex. “C”) at 26:9-16, 33:18-23; Moore Depo. (Ex. “E”) at 51:6-10
14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	85.Mr. Perez ran away from the BIP to avoid being struck by additional projectiles and did not start running until the less-lethal shots began. Ex. 5 to Leap Decl. (“Stone Depo.”) at 49:10-25; Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 33:20-34:18.	Disputed. First, the evidence cited does not support the fact asserted. Rather, the evidence shows that the less-lethal rounds were ineffective in gaining Perez’ compliance, and in response to <i>Perez accelerating toward the back of the pool table where the gun was located</i> , Corporal Cory McCarthy, Deputy Olivas, Deputy Pollick, and Deputy Moore each fired lethal rounds, at Perez in order to stop the immediate threat they perceived from Perez’ actions. <i>See</i> Pollick Depo. (Ex. “C”) at 30:6-18, 22-25, 31:2-12, 55:22-56:1, 20-22; McCarthy Depo. (Ex. “D”) at 59:4-11; 60:14-24; 63:19-22; 65:13-18; Moore Depo. (Ex. “E”) at 43:1-8, 11-19, 64:19-25; Olivas Depo. (Ex. “F”) at 24:13-15; Incident

1		Audio (Ex. “J”) at 31:49-31:57.
2	86. Basic police training provides that a	Undisputed. However, not material to
3	subject’s common reaction to being	Plaintiffs’ claims and has no bearing
4	struck by less lethal munitions is to	on Defendants’ liability in this action.
5	run away from the less lethal to	
6	avoid being struck by additional	Further, the evidence shows that the
7	projectiles.	less-lethal rounds were ineffective in
8		gaining Perez’ compliance, and in
9	DeFoe Decl. at ¶ 15; Ex. 4 to Leap	response to <i>Perez accelerating toward</i>
10	Decl. (“McCarthy Depo.”) at 56:17-	<i>the back of the pool table where the</i>
11	21.	<i>gun was located</i> , Corporal Cory
12		McCarthy, Deputy Olivas, Deputy
13		Pollick, and Deputy Moore each fired
14		lethal rounds, at Perez in order to stop
15		the immediate threat they perceived
16		from Perez’ actions. <i>See</i> Pollick Depo.
17		(Ex. “C”) at 30:6-18, 22-25, 31:2-12,
18		55:22-56:1, 20-22; McCarthy Depo.
19		(Ex. “D”) at 59:4-11; 60:14-24; 63:19-
20		22; 65:13-18; Moore Depo. (Ex. “E”)
21		at 43:1-8, 11-19, 64:19-25; Olivas
22		Depo. (Ex. “F”) at 24:13-15; Incident
23		Audio (Ex. “J”) at 31:49-31:57.
24		
25		Lastly, Scott DeFoe’s declaration
26		[Doc. 45-10] is inadmissible. <i>See</i>
27		Defendants’ Evidentiary Objections.
28		
	The Shooting	
	87. The first lethal round was fired	Disputed.
	simultaneously or within the same	
	second as the final less-lethal round.	First, the evidence cited does not
		support the fact asserted.
	Ex. J to Anderson Decl. (“Incident	
	Audio”) at 31:50; Ex. 5 to Leap Decl.	The evidence shows that <i>after the less-</i>
	(“Stone Depo.”) at 37:2038:2.	<i>lethal rounds had been deployed</i> and
		were ineffective in gaining Perez’
		compliance, and in response to Perez
		accelerating toward the back of the
		pool table where the gun was located,
		Corporal Cory McCarthy, Deputy

	<p>Olivas, Deputy Pollick, and Deputy Moore each fired lethal rounds, at Perez in order to stop the immediate threat they perceived from Perez' actions. <i>See</i> Pollick Depo. (Ex. "C") at 30:6-18, 22-25, 31:2-12, 55:22-56:1, 20-22; McCarthy Depo. (Ex. "D") at 59:4-11; 60:14-24; 63:19-22; 65:13-18; Moore Depo. (Ex. "E") at 43:1-8, 11-19, 64:19-25; Olivas Depo. (Ex. "F") at 24:13-15; Incident Audio (Ex. "J") at 31:49-31:57.</p>
<p>88. When the shots started, the deputies could see Mr. Perez's hands and could see that there was nothing in his hands.</p> <p>Ex. 4 to Leap Decl. ("McCarthy Depo.") at 41:13-25; Ex. 5 to Leap Decl. ("Stone Depo.") at 26:10-18; Ex. 6 to Leap Decl. ("Gaytan Depo.") at 29:10-15.</p>	<p>Undisputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.</p> <p>Further, the evidence shows that the less-lethal rounds were ineffective in gaining Perez' compliance, and in response to <i>Perez accelerating toward the back of the pool table where the gun was located</i>, Corporal Cory McCarthy, Deputy Olivas, Deputy Pollick, and Deputy Moore each fired lethal rounds, at Perez in order to stop the immediate threat they perceived from Perez' actions. <i>See</i> Pollick Depo. (Ex. "C") at 30:6-18, 22-25, 31:2-12, 55:22-56:1, 20-22; McCarthy Depo. (Ex. "D") at 59:4-11; 60:14-24; 63:19-22; 65:13-18; Moore Depo. (Ex. "E") at 43:1-8, 11-19, 64:19-25; Olivas Depo. (Ex. "F") at 24:13-15; Incident Audio (Ex. "J") at 31:49-31:57.</p>
<p>89. Deputy Moore fired five shots.</p> <p>Ex. 1 to Leap Decl. ("Moore Depo.") at 45:17-46:11.</p>	<p>Undisputed.</p> <p>Importantly, Sergeant Gaytan ordered the deputies to stop shooting as it appeared Perez had fallen to the ground and had stopped moving. <i>See</i> Pollick Depo. (Ex. "C") at 44:6-8;</p>

1		Gaytan Depo. (Ex. "I") at 45:10-46:21; Incident Audio (Ex. "J") at 31:49-32:10.
2		
3	90. Deputy Olivas fired three shots.	Undisputed.
4	Ex. 3 to Leap Decl. ("Olivas Depo.")	Importantly, Sergeant Gaytan ordered
5	at 6:15-16, 25:1-3, 28:1517; 29:11-	the deputies to stop shooting as it
6	21.	appeared Perez had fallen to the
7		ground and had stopped moving. <i>See</i>
8		Pollick Depo. (Ex. "C") at 44:6-8;
9		Gaytan Depo. (Ex. "I") at 45:10-
10		46:21; Incident Audio (Ex. "J") at
11	91. Corporal McCarthy fired fourteen	31:49-32:10.
12	shots, including shots to the back of	Undisputed. However, not material to
13	Mr. Perez's head.	Plaintiffs' claims and has no bearing
14	Ex. 4 to Leap Decl. ("McCarthy	on Defendants' liability in this action.
15	Depo.") at 59:7-11; 61:7-20.	Importantly, Sergeant Gaytan ordered
16		the deputies to stop shooting as it
17		appeared Perez had fallen to the
18		ground and had stopped moving. <i>See</i>
19		Pollick Depo. (Ex. "C") at 44:6-8;
20		Gaytan Depo. (Ex. "I") at 45:10-
21		46:21; Incident Audio (Ex. "J") at
22		31:49-32:10.
23	92. Deputy Pollick fired approximately	Undisputed.
24	fifteen shots.	Importantly, Sergeant Gaytan ordered
25	Ex. 2 to Leap Decl. ("Pollick Depo.")	the deputies to stop shooting as it
26	at 10:10-12; 27:2-11; 33:117; 43:8-	appeared Perez had fallen to the
27	11.	ground and had stopped moving. <i>See</i>
28		Pollick Depo. (Ex. "C") at 44:6-8;
		Gaytan Depo. (Ex. "I") at 45:10-
		46:21; Incident Audio (Ex. "J") at
		31:49-32:10.
	93. During Deputy Pollick's second	Undisputed. However, not material to
	volley of shots, he was aiming at Mr.	Plaintiffs' claims and has no bearing
	Perez's lower legs after Mr. Perez	on Defendants' liability in this action.
	was on the ground behind the pool	Importantly, Sergeant Gaytan ordered
	table.	

1 2 3 4 5	Ex. 2 to Leap Decl. (“Pollick Depo.”) at 10:10-12; 27:2-11; 33:1-17; 43:8-11.	the deputies to stop shooting as it appeared Perez had fallen to the ground and had stopped moving. <i>See</i> Pollick Depo. (Ex. “C”) at 44:6-8; Gaytan Depo. (Ex. “T”) at 45:10-46:21; Incident Audio (Ex. “J”) at 31:49-32:10.
6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	94. Mr. Perez was moving away from the Deputies during all of the shots. Ex. 1 to Leap Decl. (“Moore Depo.”) at 45:17-46:11; Ex. 2 to Leap Decl. (“Pollick Depo.”) at 27:2-11, 28:17-29:5, 43:8-11; Ex. 3 to Leap Decl. (“Olivas Depo.”) at 29:11-21, 32:18-21; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 59:711; 61:7-20.	Undisputed. However, not material to Plaintiffs’ claims and has no bearing on Defendants’ liability in this action. Importantly, the evidence shows that the less-lethal rounds were ineffective in gaining Perez’ compliance, and in response to <i>Perez accelerating toward the back of the pool table where the gun was located</i> , Corporal Cory McCarthy, Deputy Olivas, Deputy Pollick, and Deputy Moore each fired lethal rounds, at Perez in order to stop the immediate threat they perceived from Perez’ actions. <i>See</i> Pollick Depo. (Ex. “C”) at 30:6-18, 22-25, 31:2-12, 55:22-56:1, 20-22; McCarthy Depo. (Ex. “D”) at 59:4-11; 60:14-24; 63:19-22; 65:13-18; Moore Depo. (Ex. “E”) at 43:1-8, 11-19, 64:19-25; Olivas Depo. (Ex. “F”) at 24:13-15; Incident Audio (Ex. “J”) at 31:49-31:57.
21 22 23 24 25 26 27 28	95. At the time of all the shots, the deputies knew the firearm was on the ground, behind the pool table. Ex. 1 to Leap Decl. (“Moore Depo.”) at 67:10-16; 67:23-24; 68:7-23; Ex. 2 to Leap Decl. (“Pollick Depo”) at 12:15-18, 15:917, 22:15-18, 41:16-42:11, Ex. 3 to Leap Decl. (“Olivas Depo”) at 17:16-18, 62:9-21; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at	Undisputed. However, not material to Plaintiffs’ claims and has no bearing on Defendants’ liability in this action. Importantly, the evidence shows that the less-lethal rounds were ineffective in gaining Perez’ compliance, and in response to <i>Perez accelerating toward the back of the pool table where the gun was located</i> , Corporal Cory McCarthy, Deputy Olivas, Deputy Pollick, and Deputy Moore each fired

1 2 3 4 5 6 7	66:19-67:7, 69:6-13; Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 37:9-16.	lethal rounds, at Perez in order to stop the immediate threat they perceived from Perez’ actions. <i>See</i> Pollick Depo. (Ex. “C”) at 30:6-18, 22-25, 31:2-12, 55:22-56:1, 20-22; McCarthy Depo. (Ex. “D”) at 59:4-11; 60:14-24; 63:19-22; 65:13-18; Moore Depo. (Ex. “E”) at 43:1-8, 11-19, 64:19-25; Olivas Depo. (Ex. “F”) at 24:13-15; Incident Audio (Ex. “J”) at 31:49-31:57.
8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	96.The Deputies did not see Mr. Perez reach for the gun after he placed it on the ground, prior to the shooting. Ex. 3 to Leap Decl. (“Olivas Depo.”) at 62:9-14; Ex. 5 (“Stone Depo.”) at 43:1-6; Ex. 6 to Leap Decl. (“Gaytan Depo.”) at 37:9-16.	Disputed. First, the evidence cited does not support the fact asserted. Rather, the evidence shows that the less-lethal rounds were ineffective in gaining Perez’ compliance, and in response to <i>Perez accelerating toward the back of the pool table where the gun was located</i> , Corporal Cory McCarthy, Deputy Olivas, Deputy Pollick, and Deputy Moore each fired lethal rounds, at Perez in order to stop the immediate threat they perceived from Perez’ actions. <i>See</i> Pollick Depo. (Ex. “C”) at 30:6-18, 22-25, 31:2-12, 55:22-56:1, 20-22; McCarthy Depo. (Ex. “D”) at 59:4-11; 60:14-24; 63:19-22; 65:13-18; Moore Depo. (Ex. “E”) at 43:1-8, 11-19, 64:19-25; Olivas Depo. (Ex. “F”) at 24:13-15; Incident Audio (Ex. “J”) at 31:49-31:57.
24 25 26 27 28	97.Prior to firing their lethal rounds, no deputy issued a verbal warning that deadly force would be used. Ex. 1 to Leap Decl. (“Moore Depo.”) at 51:6-8; Ex. 2 to Leap Decl. (“Pollick Depo.”) at 26:9-12, 33:18-	Undisputed. However, not material to Plaintiffs’ claims and has no bearing on Defendants’ liability in this action. Importantly, the evidence shows that the deputies on the scene were not able to give commands to Perez before to lethal force encounter occurred as the

1	23; Ex. 3 to Leap Decl. (“Olivas	situation was very dynamic, uncertain,
2	Depo.”) at 25:6-8; Ex. 4 to Leap	and rapidly-evolving. <i>See</i> Pollick
3	Decl. (“McCarthy Depo.”) at 76:15-	Depo. (Ex. “C”) at 26:9-16, 33:18-23;
	22.	Moore Depo. (Ex. “E”) at 51:6-10
4	98.In total, the deputies fired	Undisputed. However, not material to
5	approximately 35 lethal rounds at Mr.	Plaintiffs’ claims and has no bearing
6	Perez.	on Defendants’ liability in this action.
7	Ex. 1 to Leap Decl. (“Moore	Importantly, Sergeant Gaytan ordered
8	Depo.”) at 45:20-22; Ex. 2 to Leap	the deputies to stop shooting as it
9	Decl. (“Pollick Depo.”) at 43:8-11;	appeared Perez had fallen to the
10	Ex. 3 to Leap Decl. (“Olivas Depo.”)	ground and had stopped moving. <i>See</i>
11	at 6:15-16; Ex. 4 to Leap Decl.	Pollick Depo. (Ex. “C”) at 44:6-8;
	(“McCarthy Depo.”) at 61:720.	Gaytan Depo. (Ex. “I”) at 45:10-
12		46:21; Incident Audio (Ex. “J”) at
		31:49-32:10.
13	99.When the Deputies approached Mr.	Disputed.
14	Perez after the shooting, McCarthy	The evidence shows that Corporal
15	observed the gun near Mr. Perez’s,	Pollick and Corporal McCarthy saw
16	left arm.	that Perez was laying on top of the
17	Ex. 4 to Leap Decl. (“McCarthy	gun. <i>See</i> Pollick Depo. (Ex. “C”) at
18	Depo.”) at 71:11-16.	49:10-21; McCarthy Depo. (Ex. “D”) at
19		71:1-4, 8-12; Moore Depo. (Ex.
20		“E”) at 82:1-11, 83:13-22; Incident
21		Audio (Ex. “J”) at 36:00-37:20.
22		Further, Deputy Stone saw the gun
23		sticking out from under Perez’
24		stomach where his hands were also
25		located, and kicked it away from him
26		so that Corporal Pollick and Corporal
27		McCarthy could start to provide
28		medical aid. <i>See</i> Stone Decl., ¶ 18;
		Pollick Depo. (Ex. “C”) at 49:10-21;
		McCarthy Depo. (Ex. “D”) at 70:16-
		19, 71:1-4; Moore Depo. (Ex. “E”) at
		81:14-25, Olivas Depo. (Ex. “F”) at
		52:14-18; Incident Audio (Ex. “J”) at
		36:00-37:20.

<p>100. Mr. Perez suffered at least eleven gunshot wounds, including to his head, right upper back/shoulder, and legs.</p> <p>Declaration of Bennet Omalu, M.D. (“Omalu Decl.”) at ¶ 12(a-i).</p>	<p>Undisputed. However, not material to Plaintiffs’ claims and has no bearing on Defendants’ liability in this action.</p> <p>Importantly, Sergeant Gaytan ordered the deputies to stop shooting as it appeared Perez had fallen to the ground and had stopped moving. <i>See</i> Pollick Depo. (Ex. “C”) at 44:6-8; Gaytan Depo. (Ex. “I”) at 45:10-46:21; Incident Audio (Ex. “J”) at 31:49-32:10.</p> <p>Lastly, Bennet Omalu M.D.’s declaration [Doc. 45-11] is inadmissible. <i>See</i> Defendants’ Evidentiary Objections.</p>
<p>101. The trajectories of these bullet wounds indicate that Mr. Perez was falling to the ground or on the ground when he was shot.</p> <p>Declaration of Bennet Omalu, M.D. (“Omalu Decl.”) at ¶ 13(a-d, f-g, i).</p>	<p>Disputed in part. However, not material to Plaintiffs’ claims and has no bearing on Defendants’ liability in this action</p> <p>The evidence shows that the deputies fired at <i>Perez as he ran toward the back of the garage, rounding the corner of the pool table, dropped his center of gravity as if crouching down behind the pool table, within arms’ reach of where the gun was located on the floor.</i> The deputies reasonably believed that Perez was trying to get to the gun to shoot someone. <i>See</i> Pollick Depo. (Ex. “C”) at 27:2-8, 28:13-21; 39:16-18, 21-24. 56:20-22; McCarthy Depo. (Ex. “D”) at 59:4-11, 60:19-24, 65:13-18, 68:24-69:1, 6-10; Moore Depo. (Ex. “E”) at 43:11-19, 44:2-12, 45:3-4, 8-12, 48:4-6, 11-14, 52:7-13; Olivas Depo. (Ex. “F”) at 32:11-13, 22-25, 33:1-3; Stone Depo. (Ex. “G”) at 45:22-46:3, 7-18,</p>

	<p>50:4-7, 11-15; Gaytan Depo. (Ex. “T”) at 38:1-23.</p> <p>Further, Sergeant Gaytan ordered the deputies to stop shooting as it appeared Perez had fallen to the ground and had stopped moving. <i>See</i> Pollick Depo. (Ex. “C”) at 44:6-8; Gaytan Depo. (Ex. “T”) at 45:10-46:21; Incident Audio (Ex. “J”) at 31:49-32:10.</p> <p>Lastly, Bennet Omalu M.D.’s declaration [Doc. 45-11] is inadmissible. <i>See</i> Defendants’ Evidentiary Objections.</p>
Standards and Training on the Use of Deadly Force	
<p>102. At the time of this incident, the Deputies were trained, pursuant to basic police training, that deadly force can only be used where the officer has an objectively reasonable belief that the subject poses an immediate threat of death or serious bodily injury to the officers or others.</p> <p>Ex. 1 to Leap Decl. (“Moore Depo.”) at 69:3-20; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 18:20-20:11; Ex. 3 to Leap Decl. (“Olivas Depo.”) at 58:7-14; Ex. 2 to Leap Decl. (“Pollick Depo.”) at 56:3-57:4; DeFoe Decl. at ¶ 5(e)-(f)</p>	<p>Undisputed. However, not material to Plaintiffs’ claims and has no bearing on Defendants’ liability in this action.</p> <p>However, the evidence shows that after the less-lethal rounds had been deployed and were ineffective in gaining Perez’ compliance, and in response to <i>Perez accelerating toward the back of the pool table where the gun was located</i>, Corporal Cory McCarthy, Deputy Olivas, Deputy Pollick, and Deputy Moore each fired lethal rounds, at Perez in order to stop the immediate threat they perceived from Perez’ actions. <i>See</i> Pollick Depo. (Ex. “C”) at 30:6-18, 22-25, 31:2-12, 55:22-56:1, 20-22; McCarthy Depo. (Ex. “D”) at 59:4-11; 60:14-24; 63:19-22; 65:13-18; Moore Depo. (Ex. “E”) at 43:1-8, 11-19, 64:19-25; Olivas Depo. (Ex. “F”) at 24:13-15; Incident Audio (Ex. “J”) at 31:49-</p>

1		31:57.
2		Lastly, Scott DeFoe's declaration
3		[Doc. 45-10] is inadmissible. <i>See</i>
4		Defendants' Evidentiary Objections.
5	103. At the time of this incident, the	Disputed. However, not material to
6	Deputies were trained, pursuant to	Plaintiffs' claims and has no bearing
7	basic police training, that officers	on Defendants' liability in this action.
8	shall give a verbal warning before	
9	using deadly force, when feasible.	First, the evidence cited does not
10		support the fact asserted. McCarthy's
11	DeFoe Decl. at ¶ 5(d); Ex. 4 to Leap	testimony states that a verbal warning
12	Decl. ("McCarthy Depo.") at 21:14-	that deadly force is going to be used
13	17; Ex. 3 to Leap Decl. ("Olivas	"when feasible." <i>See</i> Ex. 4 to Leap
14	Depo.") at 59:12-14; Ex. 1 to Leap	Decl. ("McCarthy Depo.") at 21:14-
15	Decl. ("Moore Depo.") at 70:14-18.	17. Olivas stated a warning should be
16		given "when reasonable." <i>See</i> Ex. 3 to
17		Leap Decl. ("Olivas Depo.") at 59:12-
18		14. Lastly, Moore stated that a
19		warning should be given "depending
20		on the circumstance when safe and
21		feasible." <i>See</i> Ex. 1 to Leap Decl.
22		("Moore Depo.") at 70:14-18.
23		
24		Further, the evidence shows that the
25		deputies on the scene <i>were not able to</i>
26		<i>give commands to Perez before to</i>
27		<i>lethal force encounter occurred as the</i>
28		<i>situation was very dynamic,</i>
		<i>uncertain, and rapidly-evolving. See</i>
		Pollick Depo. (Ex. "C") at 26:9-16,
		33:18-23; Moore Depo. (Ex. "E") at
		51:6-10.
		Lastly, Scott DeFoe's declaration
		[Doc. 45-10] is inadmissible. <i>See</i>
		Defendants' Evidentiary Objections.
	104. Basic police training provides that	Undisputed. However, not material to
	a subject's common reaction to being	Plaintiffs' claims and has no bearing
	struck by less lethal munitions is to	on Defendants' liability in this action.

<p>run away from the less lethal to avoid being struck by additional projectiles.</p> <p>DeFoe Decl. at ¶ 15; Ex. 4 to Leap Decl. (“McCarthy Depo”) at 56:17-21.</p>	<p>Importantly, the evidence shows that after the less-lethal rounds had been deployed and were ineffective in gaining Perez’ compliance, and in response to <i>Perez accelerating toward the back of the pool table where the gun was located</i>, Corporal Cory McCarthy, Deputy Olivas, Deputy Pollick, and Deputy Moore each fired lethal rounds, at Perez in order to stop the immediate threat they perceived from Perez’ actions. <i>See</i> Pollick Depo. (Ex. “C”) at 30:6-18, 22-25, 31:2-12, 55:22-56:1, 20-22; McCarthy Depo. (Ex. “D”) at 59:4-11; 60:14-24; 63:19-22; 65:13-18; Moore Depo. (Ex. “E”) at 43:1-8, 11-19, 64:19-25; Olivas Depo. (Ex. “F”) at 24:13-15; Incident Audio (Ex. “J”) at 31:49-31:57.</p> <p>Lastly, Scott DeFoe’s declaration [Doc. 45-10] is inadmissible. <i>See</i> Defendants’ Evidentiary Objections.</p>
<p>105. At the time of this incident, basic police training provided, and the Deputies were trained, that deadly force is the highest level of force.</p> <p>DeFoe Decl. at ¶ 5(a); Ex. 1 to Leap Decl. (“Moore Depo.”) at 69:3-20; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 18:2020:11; Ex. 3 to Leap Decl. (“Olivas Depo.”) at 58:7-14.</p>	<p>Undisputed. However, not material to Plaintiffs’ claims and has no bearing on Defendants’ liability in this action.</p> <p>Importantly, the evidence shows that based on the totality of the circumstances, Perez having the gun in his hands for several hours and having every opportunity to surrender peacefully, the deputies had no reason to believe that Perez was running back into the garage for any other reason than to get back to the gun. <i>See</i> Pollick Depo. (Ex. “C”) at 39:16-18, 21-24, 40:4-5, 9-13; McCarthy Depo. (Ex. “D”) at 65:13-18; Stone Depo. (Ex. “G”) at 45:22-46:3; Gaytan Depo.</p>

	<p>(Ex. “I”) at 38:14-23.</p> <p>Further, the evidence shows that the <i>deputies fired at Perez as he ran toward the back of the garage, rounding the corner of the pool table, dropped his center of gravity as if crouching down behind the pool table, within arms’ reach of where the gun was located on the floor.</i> The deputies reasonably believed that Perez was trying to get to the gun to shoot someone. <i>See</i> Pollick Depo. (Ex. “C”) at 27:2-8, 28:13-21; 39:16-18, 21-24. 56:20-22; McCarthy Depo. (Ex. “D”) at 59:4-11, 60:19-24, 65:13-18, 68:24-69:1, 6-10; Moore Depo. (Ex. “E”) at 43:11-19, 44:2-12, 45:3-4, 8-12, 48:4-6, 11-14, 52:7-13; Olivas Depo. (Ex. “F”) at 32:11-13, 22-25, 33:1-3; Stone Depo. (Ex. “G”) at 45:22-46:3, 7-18, 50:4-7, 11-15; Gaytan Depo. (Ex. “I”) at 38:1-23.</p> <p>Lastly, Scott DeFoe’s declaration [Doc. 45-10] is inadmissible. <i>See</i> Defendants’ Evidentiary Objections.</p>
<p>106. At the time of this incident, basic police training provided, and the Deputies were trained, that officers must have a reverence for human life.</p> <p>DeFoe Decl. at ¶ 5(g); Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 19:16-19.</p>	<p>Undisputed. However, not material to Plaintiffs’ claims and has no bearing on Defendants’ liability in this action.</p> <p>Importantly, the evidence shows that based on the totality of the circumstances, Perez having the gun in his hands for several hours and having every opportunity to surrender peacefully, the deputies had no reason to believe that Perez was running back into the garage for any other reason than to get back to the gun. <i>See</i> Pollick Depo. (Ex. “C”) at 39:16-18,</p>

	<p>21-24, 40:4-5, 9-13; McCarthy Depo. (Ex. “D”) at 65:13-18; Stone Depo. (Ex. “G”) at 45:22-46:3; Gaytan Depo. (Ex. “I”) at 38:14-23.</p> <p>Further, the evidence shows that the <i>deputies fired at Perez as he ran toward the back of the garage, rounding the corner of the pool table, dropped his center of gravity as if crouching down behind the pool table, within arms’ reach of where the gun was located on the floor.</i> The deputies reasonably believed that Perez was trying to get to the gun to shoot someone. <i>See</i> Pollick Depo. (Ex. “C”) at 27:2-8, 28:13-21; 39:16-18, 21-24. 56:20-22; McCarthy Depo. (Ex. “D”) at 59:4-11, 60:19-24, 65:13-18, 68:24-69:1, 6-10; Moore Depo. (Ex. “E”) at 43:11-19, 44:2-12, 45:3-4, 8-12, 48:4-6, 11-14, 52:7-13; Olivas Depo. (Ex. “F”) at 32:11-13, 22-25, 33:1-3; Stone Depo. (Ex. “G”) at 45:22-46:3, 7-18, 50:4-7, 11-15; Gaytan Depo. (Ex. “I”) at 38:1-23.</p> <p>Lastly, Scott DeFoe’s declaration [Doc. 45-10] is inadmissible. <i>See</i> Defendants’ Evidentiary Objections.</p>
<p>The Shooting Was Inappropriate and Contrary to Basic Police Training</p>	
<p>107. Under the facts of this case, the Deputies could not justify shooting at Mr. Perez simply because Mr. Perez was running away.</p> <p>DeFoe Decl. at ¶ 6, 8.</p>	<p>Disputed.</p> <p>Based on the totality of the circumstances, Perez having the gun in his hands for several hours and having every opportunity to surrender peacefully, the deputies had no reason to believe that Perez was running back into the garage for any other reason</p>

	<p>than to get back to the gun. <i>See</i> Pollick Depo. (Ex. “C”) at 39:16-18, 21-24, 40:4-5, 9-13; McCarthy Depo. (Ex. “D”) at 65:13-18; Stone Depo. (Ex. “G”) at 45:22-46:3; Gaytan Depo. (Ex. “I”) at 38:14-23.</p> <p>Further, the evidence shows that the <i>deputies fired at Perez as he ran toward the back of the garage, rounding the corner of the pool table, dropped his center of gravity as if crouching down behind the pool table, within arms’ reach of where the gun was located on the floor.</i> The deputies reasonably believed that Perez was trying to get to the gun to shoot someone. <i>See</i> Pollick Depo. (Ex. “C”) at 27:2-8, 28:13-21; 39:16-18, 21-24. 56:20-22; McCarthy Depo. (Ex. “D”) at 59:4-11, 60:19-24, 65:13-18, 68:24-69:1, 6-10; Moore Depo. (Ex. “E”) at 43:11-19, 44:2-12, 45:3-4, 8-12, 48:4-6, 11-14, 52:7-13; Olivas Depo. (Ex. “F”) at 32:11-13, 22-25, 33:1-3; Stone Depo. (Ex. “G”) at 45:22-46:3, 7-18, 50:4-7, 11-15; Gaytan Depo. (Ex. “I”) at 38:1-23.</p> <p>Lastly, Scott DeFoe’s declaration [Doc. 45-10] is inadmissible. <i>See</i> Defendants’ Evidentiary Objections.</p>
<p>108. Under the facts of this case, the Deputies could not justify shooting at Mr. Perez under a fleeing felon theory.</p> <p>DeFoe Decl. at ¶ 6, 8.</p>	<p>Disputed.</p> <p>Based on the totality of the circumstances, Perez having the gun in his hands for several hours and having every opportunity to surrender peacefully, the deputies had no reason to believe that Perez was running back into the garage for any other reason</p>

	<p>than to get back to the gun. <i>See</i> Pollick Depo. (Ex. “C”) at 39:16-18, 21-24, 40:4-5, 9-13; McCarthy Depo. (Ex. “D”) at 65:13-18; Stone Depo. (Ex. “G”) at 45:22-46:3; Gaytan Depo. (Ex. “I”) at 38:14-23.</p> <p>Further, the evidence shows that the <i>deputies fired at Perez as he ran toward the back of the garage, rounding the corner of the pool table, dropped his center of gravity as if crouching down behind the pool table, within arms’ reach of where the gun was located on the floor.</i> The deputies reasonably believed that Perez was trying to get to the gun to shoot someone. <i>See</i> Pollick Depo. (Ex. “C”) at 27:2-8, 28:13-21; 39:16-18, 21-24. 56:20-22; McCarthy Depo. (Ex. “D”) at 59:4-11, 60:19-24, 65:13-18, 68:24-69:1, 6-10; Moore Depo. (Ex. “E”) at 43:11-19, 44:2-12, 45:3-4, 8-12, 48:4-6, 11-14, 52:7-13; Olivas Depo. (Ex. “F”) at 32:11-13, 22-25, 33:1-3; Stone Depo. (Ex. “G”) at 45:22-46:3, 7-18, 50:4-7, 11-15; Gaytan Depo. (Ex. “I”) at 38:1-23.</p> <p>Lastly, Scott DeFoe’s declaration [Doc. 45-10] is inadmissible. <i>See</i> Defendants’ Evidentiary Objections.</p>
<p>109. Police officers are trained that they can only justify shooting under the fleeing felon theory where (1) they have information that the suspect has committed an atrocious felony involving the infliction of injury or death, AND (2) the suspect poses an immediate threat of death or serious</p>	<p>Disputed.</p> <p>San Bernardino County Sheriff’s Department Policy 3.608, The Use of Lethal Force, states that a deputy may use deadly force to protect himself or others from what he reasonably believes to be a threat of death or serious bodily injury. <i>See</i> Pollick</p>

<p>1 bodily injury.</p> <p>2</p> <p>3 DeFoe Decl. at ¶ 8.</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p>	<p>Depo. (Ex. “C”) at 56:13-19; Moore Depo. (Ex. “E”) at 65:17-18, 22-24, 66:7-10, 14-18; Olivas Depo. (Ex. “F”) at 58:11-14; Use of Force Policy (Ex. M”).</p> <p>Further, Since the Sheriff’s academy, Corporal McCarthy, Deputy Olivas, Deputy Pollick, Deputy Moore, Deputy Stone, and Sergeant Gaytan have been trained in accordance with San Bernardino County Sheriff’s Department Policy 3.608, The Use of Lethal Force, that the use of lethal force is justified to protect themselves or others from what they reasonably believe to be an immediate threat of death or serious bodily injury. <i>See</i> Gaytan Decl., ¶ 17; McCarthy Decl., ¶ 18; Olivas Decl., ¶ 18; Pollick Decl., ¶ 18; Moore Decl., ¶ 18; Stone Decl., ¶ 17; McCarthy Depo. (Ex. “D”) at 13:6-16, 19:1-8; Use of Force Policy (Ex. M”).</p> <p>Lastly, Scott DeFoe’s declaration [Doc. 45-10] is inadmissible. <i>See</i> Defendants’ Evidentiary Objections.</p>
<p>20 110. At the time of this incident on</p> <p>21 August 29, 2021, Peace Officer</p> <p>22 Standards and Training (“POST”),</p> <p>23 Learning Domain 20, Chapter 3—</p> <p>24 Use of Deadly Force, set forth four</p> <p>25 requirements that would make it</p> <p>26 reasonable for an officer to use</p> <p>27 deadly force against a fleeing subject</p> <p>28 escaping on foot. None of the four</p> <p> requirements were met in this case.</p> <p> These four requirements are:</p>	<p>Disputed.</p> <p>Based on the totality of the circumstances, Perez having the gun in his hands for several hours and having every opportunity to surrender peacefully, the deputies had no reason to believe that Perez was running back into the garage for any other reason than to get back to the gun. <i>See</i> Pollick Depo. (Ex. “C”) at 39:16-18, 21-24, 40:4-5, 9-13; McCarthy Depo. (Ex. “D”) at 65:13-18; Stone Depo.</p>

<p>(1) “. . . if the subject threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction of serious bodily harm [or death] . . .”</p> <p>(2) “. . . probable cause to believe that the subject poses a threat of death or serious physical harm, either to the officer or others . . .”</p> <p>(3) “. . . probable cause to believe that the use of deadly force is reasonably necessary . . .” [to prevent escape]”. . . some warning be given prior to the use of deadly force where feasible. .</p> <p>DeFoe Decl. at ¶ 8 (quoting POST LD 20, Ch. 3).</p>	<p>(Ex. “G”) at 45:22-46:3; Gaytan Depo. (Ex. “I”) at 38:14-23.</p> <p>Further, the evidence shows that the <i>deputies fired at Perez as he ran toward the back of the garage, rounding the corner of the pool table, dropped his center of gravity as if crouching down behind the pool table, within arms’ reach of where the gun was located on the floor.</i> The deputies reasonably believed that Perez was trying to get to the gun to shoot someone. <i>See</i> Pollick Depo. (Ex. “C”) at 27:2-8, 28:13-21; 39:16-18, 21-24. 56:20-22; McCarthy Depo. (Ex. “D”) at 59:4-11, 60:19-24, 65:13-18, 68:24-69:1, 6-10; Moore Depo. (Ex. “E”) at 43:11-19, 44:2-12, 45:3-4, 8-12, 48:4-6, 11-14, 52:7-13; Olivas Depo. (Ex. “F”) at 32:11-13, 22-25, 33:1-3; Stone Depo. (Ex. “G”) at 45:22-46:3, 7-18, 50:4-7, 11-15; Gaytan Depo. (Ex. “I”) at 38:1-23.</p> <p>Lastly, Scott DeFoe’s declaration [Doc. 45-10] is inadmissible. <i>See</i> Defendants’ Evidentiary Objections.</p>
<p>111. Basic police training instructs, and the deputies were trained that they cannot shoot someone merely because they see a gun in that person’s hands.</p> <p>Ex. 1 to Leap Decl. (“Moore Depo.”) at 66:2-18; Ex. 3 to Leap Decl. (“Olivas Depo.”) at 60:16-21; Ex. 4 to Leap Decl. (“McCarthy Depo.”) at 12:19-21, 69:3-5.</p>	<p>Disputed.</p> <p>San Bernardino County Sheriff’s Department Policy 3.608, The Use of Lethal Force, <i>states that a deputy may use deadly force to protect himself or others from what he reasonably believes to be a threat of death or serious bodily injury.</i> <i>See</i> Pollick Depo. (Ex. “C”) at 56:13-19; Moore Depo. (Ex. “E”) at 65:17-18, 22-24, 66:7-10, 14-18; Olivas Depo. (Ex. “F”) at 58:11-14; Use of Force Policy (Ex.</p>

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M”).

Here, based on the totality of the circumstances, Perez having the gun in his hands for several hours and having every opportunity to surrender peacefully, the deputies had no reason to believe that Perez was running back into the garage for any other reason than to get back to the gun. *See* Pollick Depo. (Ex. “C”) at 39:16-18, 21-24, 40:4-5, 9-13; McCarthy Depo. (Ex. “D”) at 65:13-18; Stone Depo. (Ex. “G”) at 45:22-46:3; Gaytan Depo. (Ex. “I”) at 38:14-23.

Further, the evidence shows that the *deputies fired at Perez as he ran toward the back of the garage, rounding the corner of the pool table, dropped his center of gravity as if crouching down behind the pool table, within arms’ reach of where the gun was located on the floor.* The deputies reasonably believed that Perez was trying to get to the gun to shoot someone. *See* Pollick Depo. (Ex. “C”) at 27:2-8, 28:13-21; 39:16-18, 21-24. 56:20-22; McCarthy Depo. (Ex. “D”) at 59:4-11, 60:19-24, 65:13-18, 68:24-69:1, 6-10; Moore Depo. (Ex. “E”) at 43:11-19, 44:2-12, 45:3-4, 8-12, 48:4-6, 11-14, 52:7-13; Olivas Depo. (Ex. “F”) at 32:11-13, 22-25, 33:1-3; Stone Depo. (Ex. “G”) at 45:22-46:3, 7-18, 50:4-7, 11-15; Gaytan Depo. (Ex. “I”) at 38:1-23.

Lastly, since the Sheriff’s academy, Corporal McCarthy, Deputy Olivas, Deputy Pollick, Deputy Moore,

	<p>Deputy Stone, and Sergeant Gaytan have been trained in accordance with San Bernardino County Sheriff's Department Policy 3.608, The Use of Lethal Force, that the use of lethal force is justified to protect themselves or others from what they reasonably believe to be an immediate threat of death or serious bodily injury. <i>See</i> Gaytan Decl., ¶ 17; McCarthy Decl., ¶ 18; Olivas Decl., ¶ 18; Pollick Decl., ¶ 18; Moore Decl., ¶ 18; Stone Decl., ¶ 17; McCarthy Depo. (Ex. "D") at 13:6-16, 19:1-8; Use of Force Policy (Ex. M").</p>
<p>112. When the Deputies fired their shots, there was no immediate threat of death or serious bodily injury.</p> <p>DeFoe Decl. at ¶ 13 (a-1).</p>	<p>Disputed.</p> <p>Based on the totality of the circumstances, Perez having the gun in his hands for several hours and having every opportunity to surrender peacefully, the deputies had no reason to believe that Perez was running back into the garage for any other reason than to get back to the gun. <i>See</i> Pollick Depo. (Ex. "C") at 39:16-18, 21-24, 40:4-5, 9-13; McCarthy Depo. (Ex. "D") at 65:13-18; Stone Depo. (Ex. "G") at 45:22-46:3; Gaytan Depo. (Ex. "T") at 38:14-23.</p> <p>Further, the evidence shows that the deputies fired at Perez as he ran toward the back of the garage, rounding the corner of the pool table, dropped his center of gravity as if crouching down behind the pool table, within arms' reach of where the gun was located on the floor. The deputies reasonably believed that Perez was trying to get to the gun to shoot</p>

	<p>someone. <i>See</i> Pollick Depo. (Ex. “C”) at 27:2-8, 28:13-21; 39:16-18, 21-24. 56:20-22; McCarthy Depo. (Ex. “D”) at 59:4-11, 60:19-24, 65:13-18, 68:24-69:1, 6-10; Moore Depo. (Ex. “E”) at 43:11-19, 44:2-12, 45:3-4, 8-12, 48:4-6, 11-14, 52:7-13; Olivas Depo. (Ex. “F”) at 32:11-13, 22-25, 33:1-3; Stone Depo. (Ex. “G”) at 45:22-46:3, 7-18, 50:4-7, 11-15; Gaytan Depo. (Ex. “I”) at 38:1-23.</p> <p>Importantly, since the Sheriff’s academy, Corporal McCarthy, Deputy Olivas, Deputy Pollick, Deputy Moore, Deputy Stone, and Sergeant Gaytan have been trained in accordance with San Bernardino County Sheriff’s Department Policy 3.608, The Use of Lethal Force, that the use of lethal force is justified to protect themselves or others from what they reasonably believe to be an immediate threat of death or serious bodily injury. <i>See</i> Gaytan Decl., ¶ 17; McCarthy Decl., ¶ 18; Olivas Decl., ¶ 18; Pollick Decl., ¶ 18; Moore Decl., ¶ 18; Stone Decl., ¶ 17; McCarthy Depo. (Ex. “D”) at 13:6-16, 19:1-8; Use of Force Policy (Ex. M”).</p> <p>Lastly, Scott DeFoe’s declaration [Doc. 45-10] is inadmissible. <i>See</i> Defendants’ Evidentiary Objections.</p>
<p>113. The Deputies were trained on the importance of situational awareness, which includes avoiding “contagious fire.”</p> <p>DeFoe Decl. at ¶ 14; Ex. 1 to Leap</p>	<p>Undisputed. However, not material to Plaintiffs’ claims and has no bearing on Defendant’s liability in this action.</p> <p>Importantly, Scott DeFoe’s declaration [Doc. 45-10] is inadmissible. <i>See</i> Defendants’ Evidentiary Objections.</p>

1	Decl. (“Moore Depo.”) at 33:22-8;	
2	Ex. 4 to Leap Decl. (“McCarthy	
3	Depo.”) at 50:23-25.	
4	114. Pursuant to the deputies’	Undisputed. However, not material to
5	training, it would not have been	Plaintiffs’ claims and has no bearing
6	appropriate to shoot Mr. Perez	on Defendant’s liability in this action.
7	when he was sitting on the bar stool	
8	with the firearm in his hand with	Further, the evidence shows the
9	his finger on the trigger.	deputies <i>fired at Perez as he ran</i>
10		<i>toward the back of the garage,</i>
11		<i>rounding the corner of the pool table,</i>
12		<i>dropped his center of gravity as if</i>
13		<i>crouching down behind the pool</i>
14		<i>table, within arms’ reach of where</i>
15		<i>the gun was located on the floor.</i> The
16	Ex. 1 to Leap Decl. (“Moore Depo.”)	deputies reasonably believed that
17	at 28:20-29:7; Ex. 4 to Leap Decl.	Perez was trying to get to the gun to
18	(“McCarthy Depo.”) at 33:5-11.	shoot someone. <i>See</i> Pollick Depo.
19		(Ex. “C”) at 27:2-8, 28:13-21; 39:16-
20		18, 21-24. 56:20-22; McCarthy Depo.
21		(Ex. “D”) at 59:4-11, 60:19-24, 65:13-
22		18, 68:24-69:1, 6-10; Moore Depo.
23		(Ex. “E”) at 43:11-19, 44:2-12, 45:3-4,
24		8-12, 48:4-6, 11-14, 52:7-13; Olivas
25		Depo. (Ex. “F”) at 32:11-13, 22-25,
26		33:1-3; Stone Depo. (Ex. “G”) at
27		45:22-46:3, 7-18, 50:4-7, 11-15;
28		Gaytan Depo. (Ex. “I”) at 38:1-23.
		Importantly, in response to Perez
		accelerating toward the back of the
		pool table where the gun was located,
		Corporal Cory McCarthy, Deputy
		Olivas, Deputy Pollick, and Deputy
		Moore each fired lethal rounds, at
		Perez in order to stop the immediate
		threat they perceived from Perez’
		actions. <i>See</i> Pollick Depo. (Ex. “C”)
		at 30:6-18, 22-25, 31:2-12, 55:22-
		56:1, 20-22; McCarthy Depo. (Ex.

	<p>“D”) at 59:4-11; 60:14-24; 63:19-22; 65:13-18; Moore Depo. (Ex. “E”) at 43:1-8, 11-19, 64:19-25; Olivas Depo. (Ex. “F”) at 24:13-15; Incident Audio (Ex. “J”) at 31:49-31:57.</p>
<p>115. From the standpoint of police practices and basic police training, the Defendant Deputies’ use of deadly force was contrary to Peace Officer Standards and Training (“POST”), improper, inappropriate, excessive, and unreasonable, including (but not limited to) for the following reasons:</p> <p>(1) There was no immediate threat of death or serious bodily injury at the time of any of the shots.</p> <p>(2) Mr. Perez was unarmed during all of the shots, and the Deputies knew that Mr. Perez had placed the gun on the ground before any force was deployed.</p> <p>(3) The Deputies did not see Mr. Perez reach for the gun after he placed it on the ground, prior to the shooting.</p> <p>(4) Mr. Perez was compliant during this incident.</p> <p>(5) Mr. Perez was in the process of complying with Gaytan’s command to turn around when the 40 mm rounds were deployed.</p> <p>(6) The 40 mm deployment escalated the situation.</p> <p>(7) At the time of the shooting, Mr. Perez was moving away from the 40 mm rounds and away from the deputies.</p> <p>(8) At the time of the shooting, Mr. Perez was not advancing toward any</p>	<p>Disputed.</p> <p>Based on the totality of the circumstances, Perez having the gun in his hands for several hours and having every opportunity to surrender peacefully, the deputies had no reason to believe that Perez was running back into the garage for any other reason than to get back to the gun. <i>See</i> Pollick Depo. (Ex. “C”) at 39:16-18, 21-24, 40:4-5, 9-13; McCarthy Depo. (Ex. “D”) at 65:13-18; Stone Depo. (Ex. “G”) at 45:22-46:3; Gaytan Depo. (Ex. “I”) at 38:14-23.</p> <p>Further, the evidence shows that the deputies fired at Perez as he ran toward the back of the garage, rounding the corner of the pool table, dropped his center of gravity as if crouching down behind the pool table, within arms’ reach of where the gun was located on the floor. The deputies reasonably believed that Perez was trying to get to the gun to shoot someone. <i>See</i> Pollick Depo. (Ex. “C”) at 27:2-8, 28:13-21; 39:16-18, 21-24. 56:20-22; McCarthy Depo. (Ex. “D”) at 59:4-11, 60:19-24, 65:13-18, 68:24-69:1, 6-10; Moore Depo. (Ex. “E”) at 43:11-19, 44:2-12, 45:3-4, 8-12, 48:4-6, 11-14, 52:7-13; Olivas Depo. (Ex. “F”) at 32:11-13, 22-25, 33:1-3; Stone Depo. (Ex. “G”) at 45:22-46:3, 7-18, 50:4-7, 11-15; Gaytan Depo. (Ex. “I”)</p>

1 person.
2 (9) The Deputies could not shoot Mr.
3 Perez for fleeing.
4 (10) Mr. Perez committed no crime
5 involving the infliction of injury or
6 death.
7 (11) Mr. Perez never threatened to use
8 the firearm, never raised the firearm and
9 never pointed the firearm at anyone.
10 (12) Mr. Perez never verbally
11 threatened to harm anyone.
12 (13) Officers are required to justify
13 every shot they fire, and here, all 35
14 shots were unjustified.
15 (14) The Deputies fired shots as Mr.
16 Perez was going to the ground and after
17 he was on the ground.
18 (15) The Deputies overreacted when
19 they fired, and an overreaction in using
20 deadly force can be excessive force.
21 (16) The Deputies engaged in
22 contagious shooting.
23 (17) Under the facts of this case, the
24 Deputies cannot justify shooting at Mr.
25 Perez simply because Mr. Perez
26 previously had a firearm in his hands.
27 (18) There were other reasonable
28 alternative measures available rather
than shooting, including the Taser and
the beanbag shotgun, 40 mm launcher,
giving further commands and a warning.
(19) The Deputies had information that
Mr. Perez was mentally ill or
experiencing a mental crisis and failed to
respond appropriately.
(20) The Deputies did not give a verbal
warning that they were prepared to use

at 38:1-23.

Importantly, since the Sheriff's academy, Corporal McCarthy, Deputy Olivas, Deputy Pollick, Deputy Moore, Deputy Stone, and Sergeant Gaytan have been trained in accordance with San Bernardino County Sheriff's Department Policy 3.608, The Use of Lethal Force, that the use of lethal force is justified to protect themselves or others from what they reasonably believe to be an immediate threat of death or serious bodily injury. *See* Gaytan Decl., ¶ 17; McCarthy Decl., ¶ 18; Olivas Decl., ¶ 18; Pollick Decl., ¶ 18; Moore Decl., ¶ 18; Stone Decl., ¶ 17; McCarthy Depo. (Ex. "D") at 13:6-16, 19:1-8; Use of Force Policy (Ex. M").

Lastly, Scott DeFoe's declaration [Doc. 45-10] is inadmissible. *See* Defendants' Evidentiary Objections.

1 deadly force prior to shooting, despite it
2 being feasible to do so.

3 (21) Subjective fear, or fear of a
4 potential future threat, is insufficient to
5 justify a use of deadly force.

6 (22) The Deputies showed no
7 reverence for human life when they
8 fired.

9 DeFoe Decl. at ¶ 5-13(a – 1), 1417.

10 Ex. 1 to Leap Decl. (“Moore Depo.”)
11 at 22:11-14, 45:17-46:11,
12 67:10-16; 67:23-24; 68:7-23;

13 Ex. 2 to Leap Decl. (“Pollick
14 Depo.”) at 15:9-16:6, 27:2-11,
15 28:17-29:5, 43:8-11;

16 Ex. 3 to Leap Decl. (“Olivas
17 Depo.”) at, 29:11-21, 32:18-21,
18 48:10-49:2, 62:5-21;

19 Ex. 4 to Leap Decl. (“McCarthy
20 Depo.”) at 41:13-42:2, 59:7-11;
21 61:7-20, 66:19-67:7, 69:6-13;

22 Ex. 6 to Leap Decl. (“Gaytan Depo.”) at
23 20:20-21:7, 37:9-16,
24 38:24-40:1, 47:22-25;

25 Ex. 7 to Leap Decl. (“Alcala
26 Depo.”) at 35:12-20, 52:9-14.

27 Ex. J to Anderson Decl. (“Incident
28 Audio”) 30:29-33:00.

Pre-Shooting Negligent Tactics and Escalation

116. The Deputies failed to employ
appropriate situational awareness and
appropriate tactics in this incident.

DeFoe Decl. at ¶ 14.

Disputed.

Based on the totality of the
circumstances, Perez having the gun in
his hands for several hours and having
every opportunity to surrender

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peacefully, the deputies had no reason to believe that Perez was running back into the garage for any other reason than to get back to the gun. *See* Pollick Depo. (Ex. “C”) at 39:16-18, 21-24, 40:4-5, 9-13; McCarthy Depo. (Ex. “D”) at 65:13-18; Stone Depo. (Ex. “G”) at 45:22-46:3; Gaytan Depo. (Ex. “I”) at 38:14-23.

Further, the evidence shows that the deputies fired at Perez as he ran toward the back of the garage, rounding the corner of the pool table, dropped his center of gravity as if crouching down behind the pool table, within arms’ reach of where the gun was located on the floor. The deputies reasonably believed that Perez was trying to get to the gun to shoot someone. *See* Pollick Depo. (Ex. “C”) at 27:2-8, 28:13-21; 39:16-18, 21-24. 56:20-22; McCarthy Depo. (Ex. “D”) at 59:4-11, 60:19-24, 65:13-18, 68:24-69:1, 6-10; Moore Depo. (Ex. “E”) at 43:11-19, 44:2-12, 45:3-4, 8-12, 48:4-6, 11-14, 52:7-13; Olivas Depo. (Ex. “F”) at 32:11-13, 22-25, 33:1-3; Stone Depo. (Ex. “G”) at 45:22-46:3, 7-18, 50:4-7, 11-15; Gaytan Depo. (Ex. “I”) at 38:1-23.

Importantly, since the Sheriff’s academy, Corporal McCarthy, Deputy Olivas, Deputy Pollick, Deputy Moore, Deputy Stone, and Sergeant Gaytan have been trained in accordance with San Bernardino County Sheriff’s Department Policy 3.608, The Use of Lethal Force, that the use of lethal force is justified to protect themselves

	<p>or others from what they reasonably believe to be an immediate threat of death or serious bodily injury. <i>See</i> Gaytan Decl., ¶ 17; McCarthy Decl., ¶ 18; Olivas Decl., ¶ 18; Pollick Decl., ¶ 18; Moore Decl., ¶ 18; Stone Decl., ¶ 17; McCarthy Depo. (Ex. “D”) at 13:6-16, 19:1-8; Use of Force Policy (Ex. M”).</p> <p>Lastly, Scott DeFoe’s declaration [Doc. 45-10] is inadmissible. <i>See</i> Defendants’ Evidentiary Objections.</p>
<p>117. The Deputies failed to avoid contagious fire, meaning that they failed to assess whether a threat of imminent death or serious bodily injury was actually present when they shot, and instead fired because other deputies were firing.</p> <p>DeFoe Decl. at ¶ 14.</p>	<p>Disputed.</p> <p>The evidence shows that after the less-lethal rounds had been deployed and were ineffective in gaining Perez’ compliance, and in response to Perez accelerating toward the back of the pool table where the gun was located, Corporal Cory McCarthy, Deputy Olivas, Deputy Pollick, and Deputy Moore each fired lethal rounds, at Perez in order to stop the immediate threat they perceived from Perez’ actions. <i>See</i> Pollick Depo. (Ex. “C”) at 30:6-18, 22-25, 31:2-12, 55:22-56:1, 20-22; McCarthy Depo. (Ex. “D”) at 59:4-11; 60:14-24; 63:19-22; 65:13-18; Moore Depo. (Ex. “E”) at 43:1-8, 11-19, 64:19-25; Olivas Depo. (Ex. “F”) at 24:13-15; Incident Audio (Ex. “J”) at 31:49-31:57.</p> <p>Lastly, Scott DeFoe’s declaration [Doc. 45-10] is inadmissible. <i>See</i> Defendants’ Evidentiary Objections.</p>
<p>118. The Deputies escalated the situation by deploying less lethal</p>	<p>Disputed.</p>

<p>1 rounds against a person who they had</p> <p>2 information may be mentally ill or</p> <p>3 experiencing a mental health crisis.</p> <p>4 DeFoe Decl. at ¶ 16-17.</p>	<p>In response to Perez <i>suddenly</i> turning slightly east, stepping back with his left foot, and pivoting on his right foot Deputy Stone deployed a less-lethal 40-millimeter round, <i>as was discussed in the SED Teams planning briefing</i>, which hit Perez somewhere between his waist and the top of his shoulders. See Pollick Depo. (Ex. “C”) at 20:25-21:8, 15-25, 22:1; McCarthy Depo. (Ex. “D”) at 52:19-24, 53:12, 70:2-9, 67:17-19, 70:2-9; Moore Depo. (Ex. “E”) at 34:23-35:17, 36:12-14, 18-24, 41:10-22, 54:10-15; Olivas Depo. (Ex. “F”) at 20:3-7, 21:16-22:9, 50:1-3; Stone Depo. (Ex. “G”) at 27:4-28:4, 8-25, 29:1-8, 12-17, 46:11-18, 48:19-49:6; Alcala Depo. (Ex. “H”) at 48:7-15; Gaytan Depo. (Ex. “I”) at 28:18-29:9, 32:18-33:4, 40:5-13; Incident Audio (Ex. “J”) at 28:00-31:57.</p> <p>Further, whether Perez was mentally ill is not material to Plaintiffs’ claims and has no bearing on Defendants’ liability in this action. Further, Plaintiff presents no evidence to support that Perez was mentally ill.</p> <p>Lastly, Scott DeFoe’s declaration [Doc. 45-10] is inadmissible. See Defendants’ Evidentiary Objections.</p>
<p>119. The Deputies failed to give Mr. Perez time to comply with commands prior to deploying the 40 mm rounds and failed to give Mr. Perez time to comply with the 40 mm rounds prior to shooting.</p> <p>DeFoe Decl. at ¶ 16-17.</p>	<p>Disputed.</p> <p>In response to Perez <i>suddenly</i> turning slightly east, stepping back with his left foot, and pivoting on his right foot Deputy Stone deployed a less-lethal 40-millimeter round, <i>as was discussed in the SED Teams planning briefing</i>, which hit Perez somewhere between</p>

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	<p>his waist and the top of his shoulders. <i>See</i> Pollick Depo. (Ex. “C”) at 20:25-21:8, 15-25, 22:1; McCarthy Depo. (Ex. “D”) at 52:19-24, 53:12, 70:2-9, 67:17-19, 70:2-9; Moore Depo. (Ex. “E”) at 34:23-35:17, 36:12-14, 18-24, 41:10-22, 54:10-15; Olivas Depo. (Ex. “F”) at 20:3-7, 21:16-22:9, 50:1-3; Stone Depo. (Ex. “G”) at 27:4-28:4, 8-25, 29:1-8, 12-17, 46:11-18, 48:19-49:6; Alcalá Depo. (Ex. “H”) at 48:7-15; Gaytan Depo. (Ex. “I”) at 28:18-29:9, 32:18-33:4, 40:5-13; Incident Audio (Ex. “J”) at 28:00-31:57.</p> <p>Further, the evidence shows that after the less-lethal rounds had been deployed and were ineffective in gaining Perez’ compliance, and in response to Perez accelerating toward the back of the pool table where the gun was located, Corporal Cory McCarthy, Deputy Olivas, Deputy Pollick, and Deputy Moore each fired lethal rounds, at Perez in order to stop the immediate threat they perceived from Perez’ actions. <i>See</i> Pollick Depo. (Ex. “C”) at 30:6-18, 22-25, 31:2-12, 55:22-56:1, 20-22; McCarthy Depo. (Ex. “D”) at 59:4-11; 60:14-24; 63:19-22; 65:13-18; Moore Depo. (Ex. “E”) at 43:1-8, 11-19, 64:19-25; Olivas Depo. (Ex. “F”) at 24:13-15; Incident Audio (Ex. “J”) at 31:49-31:57.</p> <p>Lastly, Scott DeFoe’s declaration [Doc. 45-10] is inadmissible. <i>See</i> Defendants’ Evidentiary Objections.</p>
120. Law enforcement officers are trained that they should attempt to de-escalate and utilize proper	<p>Disputed in part.</p> <p>The evidence shows that based on the</p>

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<p>defusing techniques throughout an incident. In this case, there was no rush, as there was no crime in progress.</p> <p>DeFoe Decl. at ¶ 17.</p>	<p>totality of the circumstances, Perez having the gun in his hands for several hours and having every opportunity to surrender peacefully, the deputies had no reason to believe that Perez was running back into the garage for any other reason than to get back to the gun. <i>See</i> Pollick Depo. (Ex. “C”) at 39:16-18, 21-24, 40:4-5, 9-13; McCarthy Depo. (Ex. “D”) at 65:13-18; Stone Depo. (Ex. “G”) at 45:22-46:3; Gaytan Depo. (Ex. “T”) at 38:14-23.</p> <p>Importantly, the deputies fired at Perez as he ran toward the back of the garage, rounding the corner of the pool table, dropped his center of gravity as if crouching down behind the pool table, within arms’ reach of where the gun was located on the floor. The deputies reasonably believed that Perez was trying to get to the gun to shoot someone. <i>See</i> Pollick Depo. (Ex. “C”) at 27:2-8, 28:13-21; 39:16-18, 21-24. 56:20-22; McCarthy Depo. (Ex. “D”) at 59:4-11, 60:19-24, 65:13-18, 68:24-69:1, 6-10; Moore Depo. (Ex. “E”) at 43:11-19, 44:2-12, 45:3-4, 8-12, 48:4-6, 11-14, 52:7-13; Olivas Depo. (Ex. “F”) at 32:11-13, 22-25, 33:1-3; Stone Depo. (Ex. “G”) at 45:22-46:3, 7-18, 50:4-7, 11-15; Gaytan Depo. (Ex. “T”) at 38:1-23.</p> <p>Lastly, Scott DeFoe’s declaration [Doc. 45-10] is inadmissible. <i>See</i> Defendants’ Evidentiary Objections.</p>
<p>121. The Deputies failed to respond appropriately, given that they had information Mr. Perez may have been</p>	<p>Disputed.</p> <p>As an initial matter, whether Perez</p>

experiencing a mental health crisis or was mentally ill.

DeFoe Decl. at ¶ 16.

was mentally ill is not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action. Further, Plaintiff presents no evidence to support that Perez was mentally ill.

Further, the evidence shows that based on the totality of the circumstances, Perez having the gun in his hands for several hours and having every opportunity to surrender peacefully, the deputies had no reason to believe that Perez was running back into the garage for any other reason than to get back to the gun. *See* Pollick Depo. (Ex. "C") at 39:16-18, 21-24, 40:4-5, 9-13; McCarthy Depo. (Ex. "D") at 65:13-18; Stone Depo. (Ex. "G") at 45:22-46:3; Gaytan Depo. (Ex. "I") at 38:14-23.

Importantly, the deputies fired at Perez as he ran toward the back of the garage, rounding the corner of the pool table, dropped his center of gravity as if crouching down behind the pool table, within arms' reach of where the gun was located on the floor. The deputies reasonably believed that Perez was trying to get to the gun to shoot someone. *See* Pollick Depo. (Ex. "C") at 27:2-8, 28:13-21; 39:16-18, 21-24, 56:20-22; McCarthy Depo. (Ex. "D") at 59:4-11, 60:19-24, 65:13-18, 68:24-69:1, 6-10; Moore Depo. (Ex. "E") at 43:11-19, 44:2-12, 45:3-4, 8-12, 48:4-6, 11-14, 52:7-13; Olivas Depo. (Ex. "F") at 32:11-13, 22-25, 33:1-3; Stone Depo. (Ex. "G") at 45:22-46:3, 7-18, 50:4-7, 11-15; Gaytan Depo. (Ex. "I") at 38:1-23.

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	Lastly, Scott DeFoe’s declaration [Doc. 45-10] is inadmissible. <i>See</i> Defendants’ Evidentiary Objections.
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DATED: March 22, 2024

**MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP**

By: /s/ Kayleigh A. Andersen, Esq.
Eugene P. Ramirez, Esq.
Lynn Carpenter, Esq.
Kayleigh A. Andersen, Esq.
Attorneys for Defendants, COUNTY OF
SAN BERNARDINO; CORY
MCCARTHY, ANDREW POLLICK;
DAVID MOORE, and CRISTINA
OLIVAS

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 801 S. Figueroa St, 15th Floor, Los Angeles, CA 90017-3012.

On March 22, 2024, I served true copies of the following document(s) described as **DEFENDANTS' RESPONSE TO PLAINTIFFS' SEPARATE STATEMENT OF GENUINE DISPUTES OF MATERIAL FACT AND ADDITIONAL MATERIAL FACTS** on the interested parties in this action as follows:

LAW OFFICES OF DALE K. GALIPO

Dale K. Galipo, Esq.
Shannon Leap, Esq.
21800 Burbank Blvd., Suite 310
Woodland Hills, CA 91367
Tel: (818) 347-3333
Fax: (818) 347-4118
Email: dalekgalipo@yahoo.com;
sleap@galipolaw.com;
slaurel@galipolaw.com

*ATTORNEYS FOR PLAINTIFFS, A.J.P.,
AND A.M.P.. ET AL.*

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on March 22, 2024, at Los Angeles, California.

Maria T. Castro

Maria T. Castro